

CHAPTER 7811
PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS; SMALL LOCAL
PROVIDERS

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7811.0050 APPLICABILITY.

This chapter applies to the provision of telecommunications service in any area served by a local exchange carrier that:

A. currently has fewer than 50,000 subscribers; and

B. the commission certified to provide local telephone services before January 1, 1998.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Act or federal act.** "Act" or "federal act" means the federal Telecommunications Act of 1996, Public Law 104-104, codified in United States Code, title 47, sections 153 to 614.

Subp. 2a. **Advertise or advertising.** "Advertise" or "advertising" means advertise or advertising the availability of services listed in Code of Federal Regulations, title 47, section 54.101, paragraph (a), and the charges for those services, throughout the relevant area using media of general distribution consistent with Code of Federal Regulations, title 47, section 54.201.

Subp. 3. **Alternative regulation plan or AFOR.** "Alternative regulation plan" or "AFOR" means an alternative to rate-of-return regulation of a local exchange carrier adopted pursuant to Minnesota Statutes, sections 237.76 to 237.774.

Subp. 4. **Applicant.** "Applicant" means a person filing a petition for certification to provide telecommunications services in Minnesota under parts 7811.0200 to 7811.0525.

Subp. 5. **Automatic location identification or ALI.** "Automatic location identification" or "ALI" means the automatic display, on equipment at the public safety answering point, of the telephone, including nonlisted and nonpublished telephone numbers and addresses, and other information about the caller's location.

Subp. 6. **ALI database provider.** "ALI database provider" means any person who provides automatic location identification to the basic emergency services provider and the governing body for a specific geographic area.

Subp. 7. **Automatic number identification or ANI.** “Automatic number identification” or “ANI” means the process used on customer-dialed calls to automatically identify the calling station.

Subp. 8. **Basic local service.** “Basic local service” means the services required under part 7811.0600 and any other services or terms determined by the commission to be integral to the basic communications, health, privacy, or safety needs of customers.

Subp. 8a. **Bona fide request.** “Bona fide request” means a request for interconnection, services, or network elements within the meaning of United States Code, title 47, section 251, subsection (f), paragraph (1), subparagraph (A), that fulfills the requirements of part 7811.2000.

Subp. 9. **Central office.** “Central office” means a facility in a telecommunications system that provides service to the general public where the telephone lines of subscribers are joined to switching equipment that redirects calls to called parties or other central offices, or to the interexchange facilities of a carrier.

Subp. 10. **Certificate of authority or certificate.** “Certificate of authority” or “certificate” means a commission order authorizing the provision of telecommunications service under this chapter.

Subp. 11. **Commission.** “Commission” means the Minnesota Public Utilities Commission.

Subp. 12. **Competitive local exchange carrier or CLEC.** “Competitive local exchange carrier” or “CLEC” means:

A. a telecommunications carrier that is certified by the commission to provide local service; or

B. a telephone company to the extent it provides local service in an exchange area for which neither the company nor any of its predecessors was certified on August 1, 1995.

This subpart does not exempt a telephone company under Minnesota Statutes, section 237.01, subdivision 7, from the applicable requirements of Minnesota Statutes, chapter 237, including rate of return regulation or earnings investigations under Minnesota Statutes, section 237.075 or 237.081, and depreciation requirements under Minnesota Statutes, section 237.22.

Subp. 13. **Customer.** “Customer” means a person who has contracted with a local service provider for retail telecommunications service and has been billed by or on behalf of that provider for that service in the person’s name or in the name of an agent or representative designated by the customer.

Subp. 14. **Department.** “Department” means the Minnesota Department of Commerce.

Subp. 15. **Eligible telecommunications carrier or ETC.** “Eligible telecommunications carrier” or “ETC” means a local service provider designated by the commission as eligible to receive federal universal service support in accordance with United States Code, title 47, section 254, and relevant federal regulations.

Subp. 16. **Emergency telephone service or 911.** “Emergency telephone service” or “911” means a telephone system using the three-digit number 911 to report police, fire, medical, or other emergency situations.

Subp. 17. **Enhanced 911 or E 911.** “Enhanced 911” or “E 911” means an emergency telephone service that includes automatic number identification and automatic location identification to facilitate public safety response.

Subp. 18. **End-user.** “End-user” means a person requesting, receiving, or using telecommunications service on a retail basis, regardless of whether that person is a customer.

Subp. 19. **Exchange area.** “Exchange area” means a geographic unit established by a local service provider and identified in the local service provider’s tariff on file with the commission. It may consist of one or more central offices or wire centers together with associated facilities used to furnish telecommunications services in that area.

Subp. 20. **Extended area service or EAS.** “Extended area service” or “EAS” means interexchange calling for which a message toll charge is not assessed.

Subp. 21. **Facilities.** “Facilities” means the plant and equipment of a telecommunications service provider, including a telecommunications service provider’s network facilities.

Subp. 22. **Facilities-based carrier.** “Facilities-based carrier” means a local service provider that relies on its own network facilities, in whole or in part, for providing local service.

Subp. 23. **Facilities-based service.** “Facilities-based service” means service offerings provided, in whole or in part, through the telecommunications service provider’s own network facilities.

Subp. 24. **FCC.** “FCC” means the Federal Communications Commission.

Subp. 25. **FCC interconnection rules.** “FCC interconnection rules” means the rules adopted by the Federal Communications Commission pursuant to the federal Telecommunications Act of 1996, United States Code, title 47, section 251, subsection (d), and codified at Code of Federal Regulations, title 47, sections 51.1 to 51.809.

Subp. 26. **Interexchange service.** “Interexchange service” means telecommunications service between exchanges as defined in a local exchange service provider’s tariff.

Subp. 27. **Interexchange trunks.** “Interexchange trunks” means transmission facilities used to transport telecommunications traffic between exchanges or central offices.

Subp. 28. **Local calling area.** “Local calling area” means the area within which calls originate and terminate without a toll charge.

Subp. 29. **Local exchange carrier or LEC.** “Local exchange carrier” or “LEC” means a telephone company that is authorized to provide local telephone service in Minnesota under Minnesota Statutes 1994, section 237.16, subdivision 2.

Subp. 30. **Local loop.** “Local loop” means the transmission path capable of transporting analog or digital signals from a network interface at a customer’s premises to a central office switching device, distribution frame, or similar demarcation point.

Subp. 31. **Local niche service.** “Local niche service” refers to point-to-point connections between end-user locations within a service area and any telecommunications services under the commission’s jurisdiction that do not fall within the definition of local service or the definition of interexchange service.

Subp. 32. **Local niche service provider.** “Local niche service provider” means a telecommunications carrier that provides local niche service pursuant to a certificate of authority granted by the commission.

Subp. 33. **Local service.** “Local service” means dial tone, access to the public switched network, and any related services provided in conjunction with dial tone and access, including services that may be required under part 7811.0600. Local service does not include local niche service.

Subp. 34. **Local service provider or LSP.** “Local service provider” or “LSP” means a telephone company or telecommunications carrier providing local service in Minnesota pursuant to a certificate of authority granted by the commission. Local service provider includes both local exchange carriers and competitive local exchange carriers.

Subp. 35. **Network element.** “Network element” means the local loop, switching functions, ports, trunks, and any other functional capability of a network, disaggregated from other network capabilities and made available to other carriers and end-users separately from all other network capabilities.

Subp. 36. **Network facilities.** “Network facilities” means a telecommunications service provider’s facilities other than those used exclusively by a reseller to provide resale service.

Subp. 37. **Number portability.** “Number portability” means the ability of customers to retain their existing telephone numbers, consistent with the requirements established by the Federal Communications Commission, notwithstanding changes in location of service, type of service, or local service provider.

Subp. 38. **Office of Attorney General-Residential Utilities Division or OAG-RUD.** “Office of Attorney General-Residential Utilities Division” or “OAG-RUD” refers to the

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Residential and Small Business Utilities Division of the Minnesota Attorney General's Office.

Subp. 39. **Person.** "Person" means an individual; a firm, company, limited liability company, partnership, limited liability partnership, corporation, cooperative, and any other commercial or business entity, however organized; any form of municipality including a county, statutory or home rule charter city, and town; and any other political subdivision or agency of the state including, but not limited to, a metropolitan council or commission, school district, joint powers authority, port authority, special service district, regional development commission, and their agencies, as well as any combination of them.

Subp. 40. **Port.** "Port" means a mechanism allowing access to switching functions, including dial tone generation, origination, and termination of local and long-distance calls.

Subp. 41. **Public safety answering point or PSAP.** "Public safety answering point" or "PSAP" means a facility equipped and staffed to receive and direct the disposition of 911 calls from the basic emergency service provider.

Subp. 42. **Resale service.** "Resale service" refers to service that is purchased on a wholesale basis from a local service provider and then resold on a retail basis to end-users.

Subp. 43. **Reseller.** "Reseller" means a local service provider that provides local service to end-users without using its own network facilities, or the unbundled network elements of a local exchange carrier.

Subp. 43a. **Rural exemption.** "Rural exemption" means the exemption from the obligations of United States Code, title 47, section 251, subsection (c), granted to a rural telephone company pursuant to United States Code, title 47, section 251, subsection (f), paragraph (1).

Subp. 43b. **Rural telephone company.** "Rural telephone company" has the meaning given in United States Code, title 47, section 153, paragraph (37).

Subp. 44. **Service area.** "Service area" means the geographic area in which a local service provider offers local service pursuant to its certificate of authority under part 7811.0200.

Subp. 44a. **Small local exchange carrier or SLEC.** "Small local exchange carrier" or "SLEC" means a telephone company with fewer than 50,000 subscribers that is authorized to provide local telephone service in Minnesota pursuant to Minnesota Statutes 1994, section 237.16, subdivision 2.

Subp. 44b. **Study area.** "Study area" means the area designated for a particular local exchange carrier by the FCC.

Subp. 45. **Telecommunications.** "Telecommunications" means any transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Subp. 46. **Telecommunications carrier.** "Telecommunications carrier" means a person, firm, association, or corporation as defined in Minnesota Statutes, section 237.01, subdivision 6.

Subp. 47. **Telecommunications service.** "Telecommunications service" means the offering of telecommunications under the commission's jurisdiction for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Subp. 48. **Telecommunications service provider.** "Telecommunications service provider" means any provider of telecommunications service.

Subp. 49. **Telephone company.** "Telephone company" means a person, firm, association, or other entity, as defined in Minnesota Statutes, section 237.01, subdivision 7.

Subp. 50. **Total service long-run incremental cost or TSLRIC.** "Total service long-run incremental cost" or "TSLRIC" has the meaning given in Minnesota Statutes, section 237.772, subdivision 1.

Subp. 51. **Universal service area.** "Universal service area" means the local exchange carrier's study area or any other area designated jointly by the commission and the FCC pursuant to Code of Federal Regulations, title 47, section 54.203, paragraphs (c) and (d).

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079; L 2001 1Sp4 art 6 s 1*

7811.0150 APPLICABILITY OF RULES OF PRACTICE AND PROCEDURE.

Proceedings under this chapter must be conducted according to the commission's rules of practice and procedure, parts 7829.0100 to 7829.1200 and 7829.2600 to 7829.3200, to the extent those parts are consistent with the requirements of this chapter. These parts set forth, among other things, the treatment of trade secret and proprietary information, the content and use of service lists, the means for achieving intervenor and participant status, the conduct of expedited proceedings, and the means for waiving commission rules.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.0200 GENERAL CERTIFICATION REQUIREMENTS.

Subpart 1. **Scope.** No person may provide telecommunications service in areas served by LECs with fewer than 50,000 subscribers in Minnesota without first obtaining a certificate under this part and parts 7811.0300 to 7811.0600, except to the extent the person is providing telephone service under a certificate issued by the commission before June 2, 1998.

Subp. 2. **Certification categories.** A person may seek certification in any of the following four categories:

- A. local facilities-based service;
- B. local resale service;
- C. interexchange service; or
- D. local niche service.

A certificate to provide local facilities-based service authorizes the provision of all forms of local service, interexchange service, and local niche service in Minnesota. A certificate to provide local resale service only authorizes the provision of local resale service. A certificate to provide interexchange service only authorizes the provision of interexchange service. A certificate to provide local niche service only authorizes the provision of local niche service. An applicant may request certification in multiple categories in a single petition.

Subp. 3. **Limitations on local service certification/intent to provide service.** An applicant may obtain certification to provide local service for a geographic area only if:

- A. the applicant has started any necessary negotiations for resale, the purchase of network elements, or interconnection under section 252 of the federal act with the local exchange carrier (LEC) currently serving the area; and
- B. the applicant files plans to comply with subpart 4.

A certificate for local service obtained under part 7811.0300 or 7811.0350 applies only to the service area designated in the petition within the limits established in this subpart. The service area may be expanded under part 7811.0300, subpart 5, or 7811.0350, subpart 5.

Subp. 3a. **Reporting service area status.** Each local service provider (LSP) shall report to the commission six months before the deadline identified in subpart 4, items A to C, regarding the extent to which it is offering local service in its service area. The report must indicate which portions of the LSP's service area, if any, remain nonoperational and delineate the LSP's projected timetable for offering local service throughout the entire area as required in subpart 4.

Subp. 4. **Service obligations.** The local service provider (LSP) certified under part 7811.0300 or 7811.0350 must offer services, consistent with part 7811.0600, throughout its entire service area within 36 months after the later of the following three dates:

- A. the date of the commission order granting the applicant's certificate of authority;

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B. the date of the commission order under part 7811.1100 approving the necessary agreements resulting from the negotiations that provided the basis under subpart 3, item A, for granting the certificate; or

C. June 2, 1998.

Unless a local service provider demonstrates to the satisfaction of the commission, under subpart 5, that its failure to offer basic local service throughout its entire service area within 36 months is the result of factors beyond the LSP's control, the commission shall revoke the LSP's certificate with respect to those areas in which the LSP is not offering basic local service.

Subp. 5. Show-cause proceeding to justify failure to serve entire area. An LSP shall file a petition with the commission to justify anticipated failure to offer basic local service as required under this part. A petition must be filed at least 90 days before the applicable deadline under subpart 4. The petition must include the basis for the local service provider's failure to meet the deadline and an alternative date by which the LSP expects to begin offering service in the areas for which it will not meet the deadline.

Subp. 6. Required notification. Petitions for certification under this chapter must be served on the department, the OAG-RUD, the Department of Administration, persons certified to provide telecommunications service within the applicant's designated service area, and the city clerk, or other official authorized to receive service or notice on behalf of the municipality, of all municipalities within the applicant's designated service area.

Subp. 7. Comment periods. Comments on a petition must be filed and served within 45 days after the petition is filed. Responsive comments must be filed and served within 20 days after the deadline for initial comments.

Subp. 8. Factual disputes. If the petition raises contested issues of material fact, the commission shall refer the matter to the Office of Administrative Hearings for contested case proceedings or conduct an expedited proceeding under Minnesota Statutes, section 237.61, if permitted under the commission's rules of practice and procedure under part 7829.1200, item B or C.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.0300 LOCAL FACILITIES-BASED SERVICE CERTIFICATION.

Subpart 1. Scope of certificate. A certificate to provide local facilities-based service authorizes the provision of telecommunications services in Minnesota within the area identified in the applicant's petition. This includes authority to provide local service through the resale of a local exchange carrier's services, the purchase and recombination of a local exchange carrier's network elements, or the use of the local service provider's own facilities.

Subp. 2. Filing requirements. A petition for authority to provide local facilities-based service must include the following information:

A. the applicant's full legal name and address, including the address of the applicant's place of business; if a corporation, the names, addresses, telephone numbers, and business experience of its officers; if a partnership or limited liability partnership, the names, addresses, telephone numbers, and business experience of persons authorized to bind the partnership; or, if a limited liability company, the names, addresses, and telephone numbers of its managers;

B. a description of the applicant's organizational structure, including documentation identifying the applicant's legal status, for example, sole proprietorship, partnership, limited liability partnership, company, limited liability company, corporation, and so forth; a copy of its articles of incorporation; and, a list of shareholders, partners, or members owning ten percent or more of the interest in the business;

C. a list of the applicant's affiliates, subsidiaries, and parent organizations, if any;

D. the nature of the applicant's business, including a list of the services it provides;

E. a description of the applicant's business history, including:

(1) the date the business was first organized, the dates of subsequent reorganizations, and the date the applicant started providing telephone or other telecommunications services; and

(2) the applicant's experience providing telephone company services or telecommunications services in Minnesota and other jurisdictions, including the types of services provided, the dates and nature of state or federal authorization to provide those services, the length of time it has provided those services, and pending or completed criminal, civil, or administrative action taken against the applicant by a state or federal authority, including any settlements, in connection with the applicant's provision of telephone company services or telecommunications services;

F. for the most recent fiscal year, a financial statement of the applicant, consisting of a balance sheet, an income statement, notes to the financial statement, and, if available, an annual report;

G. a list and description of the types of services the applicant seeks authority to offer:

(1) including the classes of customers the applicant intends to serve;

(2) indicating the extent to which it intends to provide service through use of its own facilities, the purchase of unbundled network elements, or resale;

(3) identifying the types of services it seeks authority to provide by reference to the general nature of the service, for example, voice, custom calling, signaling, information, data, and video; and

(4) listing the technology that will be used to deliver the service, for example, fiber-optic cable, digital switches, or radio;

H. a proposed price list or tariff setting forth the rates, terms, and conditions of each service offering, unless the applicant is seeking a conditional certificate under subpart 4 and has not yet developed the information listed in this item;

I. a service area map providing the information required under part 7810.0500, subpart 2, and narrative description of the area for which the applicant is seeking certification, except that if the applicant does not have the necessary agreements or tariffs to serve the entire area for which certification is sought, a map providing the information required under part 7810.0500, subpart 2, and a narrative delineating specifically those areas in which the applicant is currently prepared to provide service;

J. the date by which the applicant expects to offer local service to the entire service area for which the applicant is seeking certification, including the applicant's estimated timetable for providing at least some of its services through use of its own network facilities;

K. a description of the applicant's policies, personnel, and equipment or arrangements for customer service and equipment maintenance, including information demonstrating the applicant's ability to respond to customer complaints and inquiries promptly and to perform maintenance necessary to ensure compliance with the quality requirements set forth in the commission's rules;

L. a copy of the applicant's certificate to conduct business from the Minnesota Secretary of State;

M. a description of the applicant's facilities and the location or proposed location of those facilities;

N. other information needed to demonstrate that the applicant has the managerial, technical, and financial ability to provide the services it intends to offer consistent with the requirements of this chapter and applicable law; and

O. a statement of when comments and responsive comments are due pursuant to part 7811.0200, subpart 7.

Subp. 3. Decision criteria. A certificate to provide local facilities-based service must not be granted unless the applicant establishes that it has the financial, technical, and managerial capability to provide the services described in its petition consistent with the public interest, including the requirements of this chapter, Minnesota Statutes, section 237.16, and all other applicable laws, rules, and commission orders. The decision to grant a certificate under this part must be based on the following criteria:

A. the applicant's experience providing telecommunications service in Minnesota or other jurisdictions, including the extent to which that experience is comparable to the service plans outlined in the certification petition;

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B. the applicant's personnel, staffing, equipment, and procedures, including the extent to which these are adequate to ensure compliance with the commission's rules and orders relating to service requirements, service quality, customer service, engineering, accounting, and other relevant areas;

C. the extent to which the applicant has had any civil, criminal, or administrative action taken against it in connection with the applicant's provision of telecommunications services;

D. the applicant's cash reserves and the extent to which those reserves or cash equivalent are adequate to meet the applicant's start-up costs and expenses;

E. the applicant's business or owner equity, which must be positive;

F. the nature and location of the applicant's proposed or existing facilities, including the extent to which those facilities are capable of providing the services identified in the applicant's filing under this part;

G. the applicant's plan and facilities for receiving and responding to customer inquiries and complaints, which must include a toll-free telephone number giving customers access to the applicant's place of business during regular business hours; and

H. any other factors relevant to determining the applicant's technical, managerial, and financial capability to provide the services, as described in its petition, consistent with the public interest, including the requirements of this chapter, Minnesota Statutes, section 237.16, and all other applicable laws, rules, and commission orders.

Subp. 4. Conditional certificate. The commission may grant a conditional certificate pending submittal and commission approval of the tariffs and intercompany agreements necessary for providing the services contemplated in the applicant's petition for certification. The filings necessary to make the conditional certificate operational must include any related changes to every service area map filed under subpart 2, item I. The maps must distinguish clearly between operational areas and nonoperational areas.

Subp. 5. Amended certificate for change in service area. A local service provider (LSP) shall not provide local service in an area for which it does not have a valid certificate under this part or acquire ownership or control of another LSP without first obtaining an amended certificate from the commission applicable to the area into which the LSP proposes to expand. A petition to modify a local service provider's service area must include a revised map and descriptive narrative as provided in subpart 2, item I, indicating the applicant's proposed service area changes. If the LSP proposes to expand into an area served by a separate LEC, the LSP must meet the service area coverage requirements of part 7811.0200 with respect to the area served by that separate LEC. The petition must be served on the parties identified in part 7811.0200, subpart 6. An amended certificate under this subpart is deemed approved within 20 days of the petition's service date unless:

A. the petition involves an acquisition under Minnesota Statutes, section 237.23, in which case a certificate must not be granted until the acquisition is approved under that section; or

B. an objection to the petition is filed within 20 days of the petition's service date, in which case the commission shall determine whether to grant the petition in an expedited proceeding under Minnesota Statutes, section 237.61. An objection must identify the reasons for opposing the petition, including a statement of why the proposed service area revisions would not be consistent with the public interest.

When an objection is filed under item B, the applicant has the burden of proving that it has the technical, managerial, and financial resources to provide local service in the service area into which it proposes to expand, consistent with this chapter and applicable rules, commission orders, and laws.

Subp. 6. Changes in terms and conditions. An LSP shall file and obtain approval of tariffs to reflect any changes in terms and conditions of service. The LSP filing for a tariff change under this subpart shall demonstrate that the change is consistent with the provider's certificate and applicable commission orders, rules, or laws.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.0350 LOCAL RESALE SERVICE CERTIFICATION.

Subpart 1. **Scope of certificate.** A certificate to provide local resale service exclusively authorizes the provision of local service as a reseller throughout the service area identified in the petition. It does not authorize the provision of other telecommunications service and it does not authorize the provision of local service through the applicant's own network facilities or through the purchase and recombination of a local exchange carrier's network facilities.

Subp. 2. **Filing requirements.** A petition for authority to provide local service as a reseller must include the information required under part 7811.0300, subpart 2, items A to L and item O, except for the information relevant only to facilities-based service identified or contemplated in part 7811.0300, subpart 2, items G and K. The applicant shall provide any additional information needed to demonstrate that it satisfies the requirements for certification under subpart 3.

Subp. 3. **Decision criteria.** A certificate to provide local service as a reseller must be granted when the applicant establishes that it has the financial, technical, and managerial capability to provide the services described in its petition consistent with the public interest, including the requirements of this chapter, Minnesota Statutes, section 237.16, and all other applicable laws, rules, and commission orders. The decision to grant a certificate under this part must be based on the criteria in part 7811.0300, subpart 3, to the extent those criteria relate to the applicant's technical, managerial, and financial ability to provide resale service consistent with the public interest, including the requirements of this chapter, Minnesota Statutes, section 237.16, and all other applicable laws, rules, and commission orders.

Subp. 4. **Conditional certificate.** The commission may grant a conditional certificate for local resale service as provided in part 7811.0300, subpart 4.

Subp. 5. **Amended certificate for change in service area.** A reseller may expand its service area as provided in part 7811.0300, subpart 5.

Subp. 6. **Changes in terms and conditions.** A reseller may change its terms and conditions of service as provided under part 7811.0300, subpart 6.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.0400 INTEREXCHANGE SERVICE CERTIFICATION.

Subpart 1. **Filing requirements.** A petition to provide interexchange service, but not local service, must include all the information required for local resale service petitions under part 7811.0350.

Subp. 2. **Decision criteria.** The commission shall apply the decision criteria identified in part 7811.0300 or 7811.0350 to the extent those criteria are relevant to providing interexchange service.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.0500 LOCAL NICHE SERVICE CERTIFICATION.

Subpart 1. **Filing requirements.** A petition to provide local niche service, but not local service or interexchange service, must include a description of the applicant's business organization, experience, and expertise in providing telephone or telecommunications services, including local niche service. The petitioner must also submit a balance sheet indicating its current financial status, and a statement of when comments and responsive comments are due pursuant to part 7811.0200, subpart 7.

Subp. 2. **Decision criteria.** The commission shall apply the criteria identified in part 7811.0300 or 7811.0350 to the extent those criteria are relevant to providing the local niche services the petitioner intends to provide.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

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7811.0550 911 EMERGENCY SERVICE CAPABILITIES AND REQUIREMENTS.

Subpart 1. **CLEC 911 plan.** Before providing local service in a service area, a competitive local exchange carrier (CLEC) shall submit to the commission a comprehensive plan, detailing how it will provide 911 service to its customers in a manner consistent with applicable law, including chapter 1215, and comparable to the provision of 911 service by the local exchange carrier (LEC) operating in the competitive local exchange carrier's service area. The CLEC filing the plan shall serve the plan on the department, Office of Attorney General-Residential Utilities Division (OAG-RUD), commissioner of public safety, and, if the CLEC proposes to serve within the metropolitan area, as defined in Minnesota Statutes, section 403.02, the Executive Director of the Metropolitan 911 Board. The commission shall not permit the CLEC to begin providing local service until the commission has approved the plan.

Subp. 2. **LEC cooperation.** A LEC shall provide a CLEC with the access to facilities and information necessary to enable the CLEC to meet its 911 service obligations. With respect to resale service, the LEC shall provide a CLEC customer's name, address, and telephone number information to the automatic location identification (ALI) database provider within 24 hours of the daily close of service order activity.

Subp. 3. **Factors to apply in reviewing CLEC plan.** In determining whether to approve a competitive local exchange carrier's 911 plan under subpart 1, the commission shall consider the competitive local exchange carrier's ability and intent to:

- A. comply with chapter 1215;
- B. integrate into the 911 tandem network as specified in the relevant county plan to achieve appropriate tandem-based choking, if the county is served by a tandem network;
- C. design a network with adequate diversity and default-routing capability;
- D. provide for the display at the public safety answering point (PSAP) of the customer's old and new telephone numbers when call-forwarding technology is used for interim number portability;
- E. cooperate with each relevant county and system integrator in developing a 911 contingency plan;
- F. maintain circuit-routing profiles and expedite service restoration;
- G. share customer information and data consistent with current national standards for sharing information related to providing emergency telephone service;
- H. enter into nondisclosure agreements with the ALI database provider;
- I. submit data to the ALI database provider in the format required by the database provider;
- J. ensure that the competitive local exchange carrier's identity is shown on the ALI record and displayed at the PSAP to the extent required by the county;
- K. provide for operator-assisted emergency calls, including calls from speech-impaired, hearing-impaired, or non-English speaking customers; and
- L. perform any other function relevant to the provision of 911 emergency service.

Subp. 4. **Use of decision criteria.** The factors identified in subpart 3, items A to L, must be considered as criteria to assist the commission in its evaluation of the adequacy of 911 plans. No one factor need be considered dispositive.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079; L 2003 1Sp1 art 2 s 104*

7811.0600 BASIC LOCAL SERVICE REQUIREMENTS.

Subpart 1. **Required services.** A local service provider (LSP) shall provide, as part of its local service offering, the following to all customers within its service area:

- A. single party voice-grade service and touch-tone capability;
- B. 911 or enhanced 911 access;
- C. 1 + intraLATA and interLATA presubscription and code-specific equal access to interexchange carriers subscribing to its switched access service;

- D. access to directory assistance, directory listings, and operator services;
- E. toll and information service—blocking capability without recurring monthly charges as provided in the commission’s ORDER REGARDING LOCAL DISCONNECTION AND TOLL BLOCKING CHARGES, Docket No. P-999/CI-96-38 (June 4, 1996), and its ORDER GRANTING TIME EXTENSIONS AND CLARIFYING ONE PORTION OF PREVIOUS ORDER, Docket No. P-999/CI-96-38 (September 16, 1996), which are incorporated by reference, are not subject to frequent change, and are available through the statewide interlibrary loan system;
- F. one white pages directory per year for each local calling area, which may include more than one local calling area, except where an offer is made and explicitly refused by the customer;
- G. a white pages and directory assistance listing, or, upon customer request, a private listing that allows the customer to have an unlisted or unpublished telephone number;
- H. call—tracing capability according to chapter 7813;
- I. blocking capability according to the commission’s ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF CUSTOMER LOCAL AREA SIGNALING SERVICES, Docket No. P-999/CI-92-992 (June 17, 1993) and its ORDER AFTER RECONSIDERATION, Docket No. P-999/CI-92-992 (December 3, 1993), which are incorporated by reference, are not subject to frequent change, and are available through the statewide interlibrary loan system;
- J. telecommunications relay service capability or access necessary to comply with state and federal regulations; and
- K. any other services supported by federal universal support mechanisms pursuant to Code of Federal Regulations, title 47, section 54.101(a), except to the extent that:
 - (1) a facilities—based carrier or reseller is effectively prevented from providing such services by the local exchange carrier (LEC); or
 - (2) this subpart applies to a provider of commercial mobile services.

Subp. 2. Separate flat rate service offering. Each LSP shall offer the services identified in subpart 1 as a separate tariff or price list offering on a flat rate basis. An LSP may also offer basic local service on a measured rate basis or in combination with other services. An LSP may impose separate charges for the services set forth in subpart 1 only to the extent permitted by applicable laws, rules, and commission orders.

Subp. 3. Service area obligations: all LSPs. An LSP shall provide its local services on a nondiscriminatory basis, consistent with its certificate under part 7811.0300 or 7811.0350, to all customers who request service and whose premises fall within the carrier’s service area boundaries or, for an interim period, to all requesting customers whose premises fall within the operational areas of the local service provider’s service area under part 7811.0300, subpart 4, or 7811.0350, subpart 4. The obligation to provide resale services does not extend beyond the service capability of the underlying carrier whose service is being resold. The obligation to provide facilities—based services does not require an LSP that is not an eligible telecommunications carrier (ETC) to build out its facilities to customers not abutting its facilities or to serve a customer if the local service provider cannot reasonably obtain access to the point of demarcation on the customer’s premises.

Subp. 4. Service area obligations: ETCs. An LSP designated an ETC by the commission must provide local service, including, if necessary, facilities—based service, to all requesting customers within the carrier’s service area on a nondiscriminatory basis, regardless of a customer’s proximity to the carrier’s facilities. An LSP may assess special construction charges approved by the commission if existing facilities are not available to serve the customer.

Subp. 5. CLEC service areas. Competitive local exchange carriers (CLECs) may designate service areas different than the service areas of LECs, as provided in this chapter.

Subp. 6. Limitation on exit. An LSP shall not withdraw from a service area unless another LSP certified for that area will be able to provide basic local service to the exiting local service provider’s customers immediately upon the date the exiting provider discontinues service. An LSP shall not withdraw from its service area until at least 60 days after it has

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given written notice to the commission, department, Office of Attorney General–Residential Utilities Division (OAG–RUD), and its customers. The notice must identify the other LSPs available to its customers.

Subp. 7. **Service disconnection.** An LSP may disconnect a customer’s basic local service as allowed under parts 7810.1800 to 7810.2100, except that it shall not disconnect basic local service for nonpayment of charges for any service other than basic local service.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.0700 GENERAL SERVICE QUALITY REQUIREMENTS.

Subpart 1. **Service to end–users.** The local services provided by a local service provider (LSP) must meet the standards in:

A. applicable commission orders and rules, including parts 7810.0100 to 7810.6100 or their successor parts; and

B. the local service provider’s alternative regulation plan (AFOR), if the provider is operating under an AFOR.

Subp. 2. **Intercarrier agreements.** All local exchange carriers (LECs) and competitive local exchange carriers (CLECs) must include quality standards in their intercarrier agreements for resale, the purchase of network elements, or interconnection. These standards must, at a minimum:

A. enable each party to the agreement to meet the standards applicable under subpart 1; and

B. ensure that the CLEC receives service, network elements, and interconnection at least at parity with the services, network elements, and interconnection the LEC provides to itself or to any subsidiary, affiliate, or other party consistent with section 251, subsection (c), paragraphs (2) and (3), of the act and section 51.311, paragraph (b), of the FCC interconnection rules.

Subp. 3. **Intercarrier standards exceeding parity.** The standards in an agreement under subpart 2 may require the LEC to provide the CLEC with services, network elements, or interconnection at a level of quality exceeding that which the LEC provides itself or its affiliates. The CLEC shall pay a reasonable portion of the additional cost of providing the higher quality of service if the higher quality level goes beyond the specific mandates in applicable commission orders or rules. The reasonable portion of additional costs the CLEC must pay must be determined as provided in items A and B:

A. The CLEC shall pay for the higher quality services, network elements, or interconnection based on the proportional benefit the CLEC receives from the higher standards relative to the benefit received by the LEC.

B. The LEC shall demonstrate through its own internal quality measures that the contract standards exceed both the local exchange carrier’s internal standards and the standards set forth in applicable commission orders and rules. Disputes regarding payment for higher service levels must be resolved through arbitration under section 252, subsection (b), of the act or through the dispute resolution process set forth in the parties’ agreement.

Subp. 4. **Determining carrier responsibility.** An LSP is directly responsible to its customers for the quality of service provided to those customers. Nothing in this subpart may be interpreted or applied to impact the allocation of liability between two or more telecommunications service providers in connection with quality of service issues.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.0800 LOCAL CALLING SCOPE FOR CLECs.

Subpart 1. **Required offering.** A competitive local exchange carrier (CLEC) shall offer each end–user at least one flat rate calling area that matches the flat rate calling area offered that customer by the local exchange carrier (LEC) under part 7811.0900, subpart 1, including any applicable extended area service (EAS).

Subp. 2. **Additional calling area options.** Upon 30 days' notice to the commission, department, Office of Attorney General—Residential Utilities Division (OAG—RUD), and LEC, a CLEC may offer alternative calling areas or measured rate options in addition to the flat rate calling area offered under subpart 1. The rates charged under any alternative calling area or measured rate options must be just, reasonable, and affordable relative to the rates charged for the required calling area under subpart 1.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.0900 LOCAL CALLING SCOPE FLEXIBILITY FOR LECs.

Subpart 1. **Required offering.** A local exchange carrier (LEC) shall offer each end-user the flat rate calling area, including any applicable extended area service (EAS), offered by the LEC as of June 2, 1998, as modified to reflect any subsequent addition or removal of EAS under the following commission orders, which are incorporated by reference, regarding the commission's Investigation into the Appropriate Local Calling Scope, in Accordance with Minn. Stat. 237.161, Docket No. P-999/CI-94-296:

A. ORDER REACTIVATING THE PROCESSING OF EAS PETITIONS (October 24, 1995); and

B. ORDER AFTER RECONSIDERATION (February 23, 1996).

These orders are not subject to frequent change and are available through the statewide interlibrary loan system.

Subp. 2. **Additional calling area options.** At any time after receipt of a notice under part 7811.0800, subpart 2, that a competitive local exchange carrier (CLEC) intends to offer additional alternative local calling areas or measured rate options, the LEC may, upon 30 days' notice to the commission, department, Office of Attorney General—Residential Utilities Division (OAG—RUD), and CLECs certified in the applicable area, file a tariff offering additional calling areas or measured rate options. The rates charged under an alternative calling area or measured rate options must be just, reasonable, and affordable relative to the rates charged for the required calling area under subpart 1. Changes in current rates are subject to the applicable provisions of Minnesota Statutes, chapter 237, regarding rate changes.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1000 ANNUAL NOTICE OF CUSTOMER RIGHTS.

At the time service is initiated, at least annually thereafter, and upon customer request, a local service provider (LSP) shall provide customers with a summary, in plain language, of the rights and obligations of customers as provided in items A to D.

A. The notice must describe the complaint procedures available through the LSP and the commission, and must indicate that the customer can contact the commission if dissatisfied with the local service provider's resolution of the customer's complaint. The notice must specify the current address and the local and toll-free telephone numbers of the commission's Consumer Affairs office.

B. The notice must describe the customer's rights regarding the payment of bills, disconnection of service, privacy, deposits, low-income assistance, hearing-impaired programs, and blocking options.

C. The notice must summarize the commission's service quality standards and the remedies available to customers for failure to meet those standards.

D. The notice must specify the price and service options as required by Minnesota Statutes, section 237.66.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1050 NOTICE OF PRICE INCREASE.

A local exchange carrier (LEC) that is not otherwise required to provide notice under Minnesota Statutes, section 237.773, and that has one or more competitive local exchange

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carriers authorized to provide local services in its service area shall provide to its customers written notice of a price increase via bill insert or direct mail at least 20 days before the effective date of the price increase. The LEC shall also provide to the commission written notice of a price increase at least 20 days before the effective date of the price increase.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1100 NOTICE AND DISCLOSURE OF CALLING AREA OFFERINGS.

New calling area offerings that differ from the calling area authorized under part 7811.0900, subpart 1, must comply with the customer notice requirements of items A to C.

A. The local service provider (LSP) shall include a map that distinguishes between the new calling area offerings and the calling area required under part 7811.0900, subpart 1, in printed advertisements and written solicitations regarding the new calling area offerings and in each customer's initial bill for service under the new calling area. The printed advertisements, written solicitations, and initial bill must include a narrative explaining the differences between the different calling area offerings, including the differences in the application of toll charges.

B. The LSP shall identify clearly the differences between any new calling area offering and the calling area required under part 7811.0900, subpart 1, including the differences in the application of toll charges, as part of any oral solicitation or contact with a customer regarding the new calling area offerings.

C. The LSP shall not provide service to a customer under a calling area different from the calling area authorized under part 7811.0900, subpart 1, unless the customer requests the new calling area after receiving direct notice and explanation as required under item A or B.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1200 PROTECTION AGAINST CHANGES IN SERVICE OR PROVIDER.

A local service provider must comply with Minnesota Statutes, section 237.66, with respect to changes in a customer's local service provider.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1300 UNIVERSAL SERVICE.

Subpart 1. **State universal service support mechanism.** Eligibility for any state universal service support established by the commission under Minnesota Statutes, section 237.16, subdivision 9, must be limited to commission-designated eligible telecommunication carriers (ETCs) that offer and market the services identified in part 7811.0600, subpart 1. The support mechanism must provide support as necessary to ensure the affordability of basic local service, on a competitively neutral basis, consistent with section 254 of the act and FCC regulations adopted under the act, for the benefit of the following categories of end-users:

A. high-cost area end-users; and

B. low-income end-users.

Subp. 2. **Federal universal service support mechanism.** Eligibility for federal universal service support for the benefit of high-cost area and low-income customers shall be limited to commission-designated ETCs as provided in section 254 of the federal act and applicable FCC regulations adopted pursuant to the act. Local service providers are eligible to receive federal universal service support for the benefit of rural health care providers, educational institutions, and libraries as provided in section 254, subsection (h), paragraph (1), subparagraph (B)(ii), of the act and any applicable FCC regulations.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1400 ETC DESIGNATION.

Subpart 1. Automatic designation of LECs. On and after June 2, 1998, each local exchange carrier (LEC) operating in Minnesota shall be designated an eligible telecommunication carrier (ETC), eligible to receive universal service support throughout its service area existing on June 2, 1998, under both the federal support mechanism established pursuant to section 254 of the act and any state fund established pursuant to Minnesota Statutes, section 237.16, subdivision 9.

Subp. 2. Designation of CLECs upon petition. Upon request and consistent with the public interest, convenience, and necessity, the commission may designate a competitive local exchange carrier (CLEC) as an ETC and eligible to receive universal service support from the federal universal service support mechanisms under section 254 of the federal act and any state universal service fund established under Minnesota Statutes, section 237.16, subdivision 9, if the CLEC qualifies as an ETC under part 7811.0100, subpart 15. Before designating an additional eligible telecommunications carrier, the commission shall find that the designation is in the public interest. A request for designation as an ETC eligible to receive universal service support must be filed and decided according to the requirements of subparts 3 to 13.

Subp. 3. Determining applicable universal service area. A decision on a petition for designation to receive universal service support under this part must include a determination of the applicable universal service area. The applicable universal service area shall be the study area of the relevant LEC unless the commission and the FCC adopt a different service area pursuant to Code of Federal Regulations, title 47, section 54.203, paragraphs (c) and (d).

Subp. 4. Petition information. A competitive local exchange carrier's petition for designation as an ETC to receive federal universal service support under section 254 of the act, or any state universal service support under Minnesota Statutes, section 237.16, subdivision 9, must include:

A. the legal name, address, and telephone number of the CLEC and its designated contact person;

B. the name, address, and telephone number of the attorney, if the CLEC will be represented by an attorney;

C. the proposed effective date of designation of eligibility to receive universal service support;

D. the signature and title of the CLEC officer or representative authorizing the petition;

E. identification of the service area for which designation is sought, the LEC serving that area and whether the petitioning CLEC considers that LEC to be a rural telephone company;

F. a statement supporting the petition, which specifies why the requested designation satisfies the requirements for receiving universal service support under part 7811.0700; and

G. a statement of when and how a person may intervene, file comments and reply comments, and challenge the petition's form and completeness pursuant to subparts 6, 8, 9, and 10.

Subp. 5. Filing and service. A local service provider (LSP) filing a designation petition under subpart 1 shall file an original and 15 copies of the petition with the commission, unless otherwise directed by the executive secretary. A copy of the petition must also be served on the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), those persons on the applicable general service list established pursuant to part 7829.0600, and on all other LSPs authorized to provide services in the area for which designation is sought.

Subp. 6. Challenges to form and completeness. A person wishing to challenge the form or completeness of a designation petition shall do so within ten days of its filing. The filing local service provider shall reply to the challenge within five days of its filing.

Subp. 7. Rejection of filings. The commission shall reject a designation petition found to be substantially out of compliance with this part. A filing under this part not rejected within

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45 days of filing is considered accepted as in substantial compliance with applicable filing requirements.

Subp. 8. **Initial comments.** A person wishing to comment on a designation petition under this part shall file initial comments within 20 days of the filing. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedure, together with reasons for the recommendation.

Subp. 9. **Petition to intervene.** If a person who files initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene pursuant to part 7829.0800, or 1400.6200 if the matter is before an administrative law judge, before the reply comment period expires. The intervention petition may be combined with comments on the filing.

Subp. 10. **Reply comments.** Commenting parties have ten days from the expiration of the original comment period to file reply comments. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 11. **Nature of proceeding.** Unless all parties agree to the use of a different procedure or all material issues of fact have been resolved, the commission shall conduct an expedited proceeding under Minnesota Statutes, section 237.61, or refer the matter for a contested case proceeding.

Subp. 12. **Time frame for disposition.** The commission shall take final action within 180 days of the filing of the petition.

Subp. 13. **Unserviced areas.** The commission may order an LSP to provide the services that are supported by a federal universal service support mechanism to an otherwise unserved area only as provided in section 102(a) of the act and consistent with Minnesota Statutes, sections 237.081 and 237.16.

Subp. 14. **Relinquishment of universal service.** A local service provider may relinquish its ETC designation and accompanying universal service obligations as provided in items A to C.

A. A local service provider seeking to relinquish its ETC designation shall file a petition with the commission, specifying the service area for which it seeks to relinquish its designation, its proposed timetable for relinquishing its designation, and the identity of the other ETCs serving the service area. The petition to relinquish must be served on the department, the OAG-RUD, and all other local service providers serving the area for which the petitioner seeks to relinquish its ETC designation.

B. The commission shall permit a local service provider to relinquish its ETC designation if at least one other ETC serves the area for which the relinquishment is sought.

C. The petitioning ETC shall continue to meet its ETC obligations for the entire area for which it seeks to relinquish those obligations until the date specified in the commission's order approving the relinquishment. The commission shall specify the date upon which the local service provider may discontinue service based on the ability of other ETCs to serve the relinquishing provider's customers as provided in section 102(a) of the act.

Subp. 15. **Revocation.** The commission shall revoke a local service provider's ETC designation upon finding that the LSP does not qualify as an ETC under part 7811.0100, subpart 15.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1500 INTERCARRIER NEGOTIATIONS GENERALLY.

Subpart 1. **Definitions.** The following definitions apply to parts 7811.1500 to 7811.1900:

A. "Arbitration" means an alternative process for resolving disputes submitted to the commission pursuant to section 252 of the act, in which the commission, assisted by a neutral third party fact finder, makes a final determination on the issues presented.

B. "Arbitrator" means the person or persons designated by the commission to conduct arbitration proceedings as provided in part 7811.1700.

C. "Intervenor" means a person who is not a party to the negotiation but who is permitted to participate as a party in a proceeding under part 7811.1700 or 7811.1800.

D. "Mediation" means a voluntary alternative dispute resolution process in which a neutral third party helps parties reach a negotiated agreement as provided in part 7811.1600.

E. "Negotiating party" means a party to negotiations under section 252 of the act.

F. "Participant" means a person who files comments or otherwise participates in an arbitration or approval proceeding without becoming a party to the proceeding.

G. "Party" means a party to the negotiations under section 252 of the act, or a person permitted to intervene in the arbitration or approval proceeding under part 7811.1700 or 7811.1800.

H. "Petition for arbitration" means the petition requesting arbitration of open issues in a negotiation for interconnection or resale pursuant to section 252 of the act.

I. "Petitioner" means a party to a negotiation who files a petition for arbitration.

J. "Respondent" means a party to a negotiation against whom a petition for arbitration is filed.

Subp. 2. **Establishing initial service list.** Persons desiring to receive notice of (1) requests for negotiation under section 252 of the act, (2) filings related to arbitrations under part 7811.1700, and (3) approval proceedings under part 7811.1800, shall file a written request with the incumbent local exchange carrier (LEC). The LEC shall maintain a list of all persons who have filed the requests and shall provide the list to any carrier requesting negotiations under section 252 of the act. The commission's rules of practice and procedure, part 7829.0600, subparts 2 to 5, apply to this list.

Subp. 3. **Notice of interconnection request.** An incumbent LEC that receives a bona fide request for negotiation pursuant to part 7811.2000, subpart 1, shall notify the commission in writing of the request. The notice must identify the party requesting negotiation and the date of the request. The notice must be filed and served on the other party to the negotiation, the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), and persons on the service list established under subpart 2 within ten days after receiving the request.

Subp. 4. **Update on negotiation status.** Each party to a negotiation shall, between 90 and 125 days after the bona fide request for negotiation, notify the commission in writing of the status of the negotiations. The status report must identify any issues that have been settled, provide any timetable for completing the negotiations on which the parties have agreed, and indicate the date, if any, on which the party anticipates filing for arbitration. The parties may file a joint status report in lieu of a separate report from each party.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1600 MEDIATION OF INTERCARRIER NEGOTIATIONS.

Subpart 1. **Request for mediation.** A party may request mediation by the commission at any point during the negotiation. The parties to the negotiation may also file a joint request for mediation. The request must be in writing and must include the following information:

A. the identity of the parties to the negotiation, including the name, address, and telephone numbers and FAX numbers of the parties or their representatives;

B. the date on which the bona fide request for negotiation was made pursuant to part 7811.2000, subpart 1, or the date on which the local exchange carrier's rural exemption was terminated pursuant to part 7811.2000, whichever is later;

C. a brief summary of the parties negotiation history, including meeting dates and issues discussed;

D. a brief statement of the nature of the dispute, including a list of the issues in the negotiation that identifies which issues have already been resolved, which have not been resolved and which unresolved issues should be mediated;

E. a statement of the parameters, if any, within which the requesting party expects the mediator to help resolve the disputed issues;

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F. a proposed calendar for the mediation, including a date by which the mediation should be terminated if an agreement is not reached;

G. any recommendations regarding the choice of mediator, including preferences related to qualifications or individuals;

H. any agreements between the parties as to how the mediation should be conducted; and

I. when and how to respond to the request pursuant to subpart 3 if any negotiating party did not join the mediation request.

Subp. 2. Notice of request. The party requesting mediation shall serve the request on the other party or parties to the negotiation, the department and the Office of Attorney General–Residential Utilities Division (OAG–RUD).

Subp. 3. Response to request. The negotiating party that did not file a mediation request shall file with the commission a written response to the request within ten days after being served under subpart 2. The response must be served as provided in subpart 2. The response must indicate whether the party is willing to participate in a mediation and identify any disagreements with the text of the petition for mediation.

Subp. 4. Decision to initiate mediation. The commission shall initiate a mediation upon request under subpart 2 unless another party to the negotiation indicates in writing that it will not participate in a mediation. The mediation shall be initiated by appointing a mediator under subpart 5.

Subp. 5. Appointment of mediator. Within 15 days after receiving the mediation request, the commission or the commission's executive secretary shall appoint a person or persons to serve as mediator unless a party to the negotiation has submitted written notice that it will not participate in the mediation. Upon appointment, the mediator shall contact the parties promptly and establish a time to begin mediation. This subpart does not preclude the parties, by mutual agreement, from seeking private mediation from some other source in lieu of mediation under this part.

Subp. 6. Mediator qualifications. The person appointed to mediate must be an administrative law judge assigned by the Office of Administrative Hearings, a member of the commission's staff, or a person retained by the commission on contract for the purpose of mediating under this part. The mediator assigned must have training or experience in mediation or expertise in the subject matter of the negotiations.

Subp. 7. Mediator neutrality and participation in subsequent proceedings. The mediator must have no personal or financial interest in the outcome of the negotiations. The mediator shall not conduct or participate in any arbitration or approval proceedings regarding the matters submitted for mediation except as provided in subpart 15.

Subp. 8. Mediator role. The mediator has no authority to compel a settlement, but shall attempt to encourage voluntary settlement by the parties. The mediator may make suggestions or, subject to the consent of the parties, take actions the mediator considers helpful in facilitating a settlement. The mediator's actions may include:

- A. scheduling meetings;
- B. directing the parties to provide and exchange information;
- C. holding private caucuses with each party;
- D. consulting other sources such as the department or commission staff; and
- E. making oral or written recommendations for settlement.

Subp. 9. Representation of parties. A party may be represented by counsel or others of the party's choice.

Subp. 10. Privacy. Persons other than the parties' representatives may attend mediation sessions or otherwise participate in the mediation only upon agreement of the parties and the mediator.

Subp. 11. Confidentiality. Records, reports, or other documents received by the mediator while serving in that capacity must not be divulged by the mediator in any subsequent proceeding. In any subsequent proceeding, the parties shall not rely on or introduce as evidence any of the following:

- A. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- B. admissions made by another party in the course of the mediation;
- C. proposals made or views expressed by the mediator; or
- D. the fact that another party did or did not indicate a willingness to accept a proposal for settlement made by the mediator.

Subp. 12. **Discovery.** Subpart 11 does not require the exclusion of evidence in subsequent proceedings that is otherwise discoverable.

Subp. 13. **Record.** No stenographic record or electronic recording of the mediation process is permitted.

Subp. 14. **Termination of mediation.** The mediator shall end the mediation under any of the following circumstances:

- A. the parties execute an agreement on all the issues in dispute in the mediation;
- B. at least one party submits to the mediator and serves on the parties a written declaration of the party's unwillingness to continue the mediation; or
- C. the mediator determines that the mediation is unlikely to lead to a settlement, in which case the mediator shall serve on the commission and the parties a written statement terminating the mediation.

Subp. 15. **Mediator serving as arbitrator.** The mediator shall not conduct or participate in the arbitration proceedings under part 7811.1700 unless all the parties to the negotiation agree in writing. If the parties and mediator agree to have the mediator conduct the arbitration proceedings under part 7811.1700, they shall notify the commission in writing of this agreement. Unless the commission designates someone else to conduct the arbitration, the mediator shall be deemed to have been designated to conduct the arbitration effective upon commission receipt of the written notice.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.1700 ARBITRATION OF INTERCARRIER NEGOTIATIONS.

Subpart 1. **Request to arbitrate.** During the period from the 135th day to the 160th day, inclusive, after the later of (1) the date on which an incumbent local exchange carrier (LEC) receives a bona fide request to negotiate pursuant to part 7811.2000, subpart 1, or (2) the date upon which the LEC's rural exemption was terminated pursuant to part 7811.2000, any party to the negotiation may petition the commission to arbitrate unresolved issues in the negotiation. The petition must include the following:

- A. the name, address, and telephone number of the petitioner and its counsel;
- B. the name, address, and telephone number of the other party to the negotiation and its counsel;
- C. a brief summary of the negotiation history since the request for negotiation was made, including meeting dates;
- D. the date of the initial bona fide request for negotiation or the date upon which the LEC's rural exemption was terminated, whichever is later, and the dates 135 days, 160 days, and nine months after that date;
- E. a list of the issues resolved by the parties, including a copy of any proposed contract language that reflects the resolution of those issues;
- F. a list of the unresolved issues, if any, that are not being submitted for arbitration;
- G. a list of the unresolved issues submitted for arbitration and the position of each of the parties with respect to those issues;
- H. any proposed contract language reflecting the parties' positions;
- I. a written narrative that explains the petitioner's position on each disputed issue and indicates how the petitioner's and respondent's positions meet or fail to meet the requirements of the act, applicable FCC regulations, applicable state statutes, and applicable rules, orders, or policies of the commission;

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J. any terms and conditions the petitioner recommends imposing;

K. a proposed schedule for implementing the terms and conditions imposed in the arbitration;

L. a recommendation as to what information the other parties to the negotiation should provide, including a narrative explaining the relevance and importance of the information;

M. a proposed agreement reflecting the petitioner's recommended resolution of the disputed issues;

N. all documentation in the petitioner's possession or control that is relevant to the dispute, including:

(1) the documents the petitioner intends to rely on to support its position on each issue, including exhibits the petitioner intends to introduce at the arbitration hearing;

(2) to the extent prices are in dispute, the petitioner's proposed rates or charges and relevant cost studies and other information supporting those rates or charges;

O. any procedural recommendations regarding the conduct of the arbitration;

P. any request for a protective order;

Q. a list of all the witnesses and exhibits the petitioner intends to present at the arbitration hearing under subpart 17;

R. any request for consolidation under subpart 12; and

S. a statement of how those who are not parties may participate, pursuant to subpart 10.

Subp. 2. Response to petition. A nonpetitioning party or other interested person shall file with the commission any request to modify the procedures under this part or to consolidate the proceeding under subpart 11 within five days after the petition is filed. A nonpetitioning party shall file with the commission a complete response to the arbitration petition within 25 days after the petition is filed. The response must include the information required for petitions under subpart 1.

Subp. 3. Service and verification of petition and response. The petition and response must be served on the other party to the negotiations, the department, the Office of Attorney General—Residential Utilities Division (OAG—RUD), and all persons on the service list established pursuant to part 7811.1500, subpart 2. Petitions and responses under subparts 1 and 2, and their accompanying documentation, must be verified.

Subp. 4. Assignment of arbitrator. The commission shall meet and issue an order assigning an arbitrator within 25 days after the petition is filed. The commission may appoint a single arbitrator or a panel of arbitrators. The order may include procedural requirements or guidelines for the conduct of the arbitration in addition to those established in this part, and must include a decision on any request to consolidate proceedings under subpart 12. If the procedures set forth in the commission's order conflict with the procedures established in this part, the commission shall vary the requirements of this part as necessary under part 7829.3200.

Subp. 5. Mediation—arbitration hybrid. The arbitration shall proceed without a commission order under subpart 4 if the arbitrator was designated under part 7811.1600, subpart 15, unless a party files a petition with the commission to decide procedural disputes regarding the conduct of the arbitration.

Subp. 6. Arbitrator qualifications. The arbitrator must be, or the arbitration panel must include, an administrative law judge with the Office of Administrative Hearings or a person with arbitration or adjudicative experience retained by the commission on contract for the purpose of arbitrating under this part. If an arbitration panel is used, the administrative law judge or other experienced arbitrator under contract with the commission shall chair the panel.

Subp. 7. Arbitrator neutrality. The person assigned to conduct the arbitration proceedings must have no personal or financial interest in the outcome of the proceeding. The arbitrator must not have participated or assisted materially in the negotiations leading up to the arbitration unless the arbitrator served as a mediator and was assigned under part

7811.1600, subpart 15, or the negotiating parties otherwise agree expressly in writing to waive the limitation in this subpart.

Subp. 8. Arbitrator role and authority. The arbitrator shall conduct the arbitration proceedings and submit a recommended decision to the commission. The commission is the final arbiter and shall issue the final binding decision under section 252, subsection (b), paragraph (4), of the act. The arbitrator has those duties and powers necessary to conduct the arbitration, including the authority to:

- A. conduct hearings and prehearing conferences;
- B. direct parties to serve verified statements and exhibits;
- C. supervise discovery procedure;
- D. administer oaths and affirmations;
- E. examine witnesses and allow parties to examine an adverse party or agent;
- F. rule upon matters that do not result in the final determination of the proceeding;
- G. direct any person to produce witnesses or information relevant to issues in the arbitration;
- H. waive any of the requirements in this part upon agreement of the parties or for good cause;
- I. issue protective orders as provided in subpart 9; and
- J. issue proposed arbitration decisions as provided in subpart 19.

Subp. 9. Proprietary information. Trade secret and proprietary information must be treated as provided under the commission's rules of practice and procedure, part 7829.0500. At any time during the proceeding, the arbitrator or commission may enter an order to protect the confidential, proprietary, or trade secret nature of data, information, or studies.

Subp. 10. Intervenors and participants. The department and OAG-RUD may intervene in an arbitration proceeding by filing comments or a request to intervene within 25 days after the arbitration petition is filed. The comments or intervention request must be served on the negotiating parties and the persons on the service list established under part 7811.1500, subpart 2. No other intervention is permitted. Others wishing to participate may attend hearings as observers, file written comments and request the opportunity for oral argument to the arbitrator or the commission as provided in part 7829.0900.

Subp. 11. Staff involvement. Commission staff may attend all prehearing conferences and hearings. Staff may question witnesses to the extent the arbitrator considers the questions relevant and helpful in developing a record for decision.

Subp. 12. Consolidation. A party or other interested person may petition the commission to consolidate an arbitration with another arbitration or related proceeding. The petition must identify the issues common to the proceedings for which consolidation is sought, indicate the appropriate deadline for completing the consolidated proceeding, and explain why the request should be granted based on the criteria in items A to D. The commission may also take up the issue of consolidation on its own motion. The commission may consolidate an arbitration with another proceeding if the rights of the parties or the public interest will not be materially prejudiced by consolidation. The commission shall decide whether to consolidate based on:

- A. the commonality of issues and interests in the proceedings;
- B. the degree to which consolidation would reduce administrative burdens on the commission and the parties in the proceedings for which consolidation is being considered;
- C. the administrative burdens and delay that may result from consolidation; and
- D. the rights and preferences of the parties.

Subp. 13. Discovery request and response. A party may serve requests for discovery on other parties at any time after the arbitration petition is filed, and may seek discovery by any means available under the Rules of Civil Procedure for the District Courts of Minnesota, subject to the discretion of the arbitrator under subpart 14. Initial requests for discovery must be served no later than 35 days after the arbitration petition is filed. The response to the request must explain any refusal to provide the information requested. The request and response must be served on the parties and filed with the arbitrator and the commission.

Subp. 14. **Arbitrator discretion.** The arbitrator may establish a schedule for discovery, including setting deadlines for responses to discovery requests and limiting the number of questions permitted in any written depositions or interrogatories, and may set any reasonable limits on the type, scope, or extent of discovery as needed to avoid delay or undue hardship on a party.

Subp. 15. **Inadequate response to discovery requests.** If a party believes another party has failed to respond adequately to a discovery request, the party shall file a written statement to that effect with the arbitrator before the hearing has closed. The statement must identify specifically the alleged inadequacies and provide the reasons for concluding that the discovery responses were inadequate. The party against whom the allegation is made may file a written statement responding to the allegation according to the timetable established by the arbitrator. The arbitrator or commission may do any of the following based on a party's failure to respond adequately to discovery requests or cooperate in the discovery process:

- A. issue an order to compel discovery;
- B. resolve the issue to which the discovery pertains in favor of the party making the discovery request; or
- C. treat the failure as a failure to negotiate in good faith under the act.

Subp. 16. **Prehearing conference.** The arbitrator shall hold at least one prehearing conference no later than ten days after the response to the arbitration petition is filed under subpart 2. The arbitrator shall ensure the parties receive notice of the prehearing conference at least 48 hours in advance. The notice may be provided in writing by mail, hand-delivery or facsimile, or orally by telephone. The arbitrator may hold as many prehearing conferences as necessary to ensure the fair and expeditious conduct of the arbitration. The prehearing conferences may be used to set the hearing schedule and guidelines, and to consider all other relevant procedural matters, including:

- A. identification and narrowing of issues;
- B. amendments to documents;
- C. limitations on the number of witnesses; and
- D. discovery.

Subp. 17. **Hearing.** If material issues of fact are in dispute, the arbitrator must conduct a hearing with the opportunity for cross-examination. The arbitrator shall schedule the hearing to ensure the proceeding can be completed by the deadline under the act. The arbitrator shall conduct the hearing according to the following procedures:

- A. The arbitrator shall serve notice of the hearing on all parties and participants at least five days before the hearing begins.
- B. Oral testimony must be given under oath and witnesses are subject to cross-examination.
- C. The arbitrator may, with or without timely objection, exclude evidence or limit testimony that is irrelevant or unduly repetitious.
- D. The arbitrator shall ensure that a written transcript of the hearing is prepared.

Subp. 18. **Posthearing argument and comment.** Parties shall file briefs and reply briefs as directed by the arbitrator. Participants may file comments and reply comments during the briefing period.

Subp. 19. **Arbitrator's recommended decision.** The arbitrator shall issue a recommended decision on the issues submitted for arbitration no later than 35 days before the date nine months after the later of (1) the request for negotiation that gave rise to the arbitration, or (2) the termination of the LEC's rural exemption, pursuant to part 7811.2000. The decision must be in writing, setting forth the recommended resolution of each issue submitted for arbitration that has not been resolved through subsequent negotiations. The decision must also include a recommended schedule for implementation by the parties. The decision must be accompanied by a written memorandum that provides the rationale for each recommended resolution, including any necessary findings and relevant citations to law.

Subp. 20. **Exceptions.** The parties and participants may file exceptions to the recommended decision and requests for oral argument with the commission no later than ten days after the arbitrator issues the recommended decision under subpart 19.

Subp. 21. **Commission decision.** The commission shall issue a final arbitration decision no later than nine months after the later of (1) the request for negotiation that gave rise to the arbitration, or (2) the termination of the LEC's rural exemption pursuant to part 7811.2000. The decision must include a resolution of each issue submitted for arbitration that has not been resolved through subsequent negotiations. The decision must also include a schedule for implementation by the parties and a deadline for submitting a final agreement to the commission for approval under part 7811.1800.

Subp. 22. **Decision criteria.** Issues submitted for arbitration must be resolved consistent with the public interest, to ensure compliance with the requirements of sections 251 and 252(d) of the act, applicable FCC regulations, and applicable state law, including rules and orders of the commission.

Subp. 23. **Burden of proof.** The burdens of production and persuasion with respect to issues of material fact are on the incumbent LEC. The facts at issue must be proven by a preponderance of the evidence. The arbitrator may shift the burden of production as appropriate, based on which party has control of the critical information regarding the issue in dispute. The arbitrator may also shift the burden of proof as necessary to comply with applicable FCC regulations regarding burden of proof.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.1800 AGREEMENT APPROVAL.

Subpart 1. **Filing of agreement.** The negotiating parties shall submit a complete agreement to the commission by the deadline established in the commission's final arbitration order under part 7811.1700, subpart 21, unless the agreement does not include any arbitrated terms, in which case the parties may file the agreement at a time of their own choosing. The agreement must contain all negotiated and arbitrated terms and must include a memorandum that:

- A. identifies and explains inconsistencies between the arbitrated terms of the agreement and the commission's arbitration decision;
- B. explains how the agreement is consistent with the public interest and nondiscriminatory as to other local service providers;
- C. describes the likely impact, if any, on the rates or service of the end-use customers of both providers; and
- D. provides the rationale for severance, if requested under subpart 3.

Subp. 2. **Service.** The negotiating parties shall serve the agreement on the department, the Office of Attorney General-Residential Utilities Division (OAG-RUD), and persons on the service list established under part 7811.1500, subpart 2. The agreement must be served on the same day it is submitted to the commission.

Subp. 3. **Severance of arbitrated and negotiated terms.** The commission shall consider arbitrated terms separate from negotiated terms with respect to a single negotiation request under the act only if the commission finds that the arbitrated matters are unrelated to the negotiated matters as, for example, wholesale rates for resale may be unrelated to interconnection issues. A request for severance under this subpart must be made in writing prior to or as part of the filing of the agreement under subpart 1.

Subp. 4. **Comments.** If the agreement contains arbitrated terms, then parties and participants may file written comments on the filing under subpart 1 no later than ten days after the agreement is filed. If the agreement contains no arbitrated terms, then parties and participants may file written comments on the filing under subpart 1 no later than 30 days after the agreement is filed.

Subp. 5. **Decision criteria.** The commission shall reject an agreement if it finds that the agreement discriminates unreasonably against another telecommunications carrier as defined in United States Code, title 47, section 153, paragraph (44), is inconsistent with the public interest or, with respect to its arbitrated terms, fails to comply with the commission's arbitration decision under part 7811.1700, subpart 21, or meet the arbitration standards set forth in part 7811.1700, subpart 22.

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Subp. 6. **Commission decision.** The commission shall issue a written order accepting or rejecting the agreement. The commission shall issue its decision no later than 90 days after the agreement is filed unless:

A. the parties to the agreement agree to extend the deadline;

B. the agreement filed under subpart 1 contains no negotiated terms, in which case the commission shall issue its decision within 30 days; or

C. the commission considers the arbitrated terms separately as a separate agreement pursuant to a severance under subpart 3, in which case the commission shall issue its decision with respect to the arbitrated terms within 30 days.

Subp. 7. **Rehearing.** If the commission rejects an agreement, the parties may file a petition for rehearing at any time, provided the parties have agreed to changes that they believe remedy the deficiencies identified by the commission. If the parties cannot agree on changes, they shall proceed with negotiations and, if necessary, arbitration according to section 252 of the act and parts 7811.1500 to 7811.1800.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.1900 DISPUTES ARISING UNDER EXISTING AGREEMENTS.

Disputes arising in the implementation of an agreement must be submitted to the commission for arbitration under part 7811.1700, unless:

A. the agreement provides a different mechanism for resolving those disputes; or

B. the dispute is filed under Minnesota Statutes, section 237.462, and the commission orders an expedited proceeding under subdivision 6 of that section.

Statutory Authority: *MS s 216A.05; 237.10; 237.16; 237.71*

History: *22 SR 2079; 25 SR 1677*

7811.2000 RURAL EXEMPTION CLAIM; NOTICE, PROCEEDINGS.

Subpart 1. **Bona fide request.** A competitive local exchange carrier (CLEC) seeking interconnection, services, or network elements with a local exchange carrier (LEC) shall submit to the LEC a bona fide request. The bona fide request shall include, to the extent known, the CLEC's best reasonable estimate of the following information concerning interconnection services or network elements that the CLEC believes may be within the scope of its request to be negotiated or arbitrated with the LEC.

A. Points of interconnection:

(1) Yes No line-side interconnections;

(2) Yes No trunk-side interconnections;

(3) Yes No tandem trunk interconnections;

(4) Yes No central office cross-connects;

(5) Yes No out-of-band signaling transfer points, including call-related databases;

(6) Yes No points of access to unbundled network elements;

(7) Yes No interconnection facilities with specifications different from the incumbent LEC's facilities;

(8) Yes No two-way trunks.

B. Unbundled elements:

(1) Yes No local loops, including subloop unbundling;

(2) Yes No network interface devices;

(3) Yes No local or tandem switching;

(4) Yes No interoffice transmission facilities;

(5) Yes No signaling networks and call-related databases, including service management systems;

(6) Yes No operations support systems;

(7) Yes No operator services and directory assistance.

C. Collocation:

(1) Yes No physical, including:

(a) Yes No transmission equipment;

(b) Yes No equipment used to terminate transmission equipment;

(2) Yes No virtual;

(3) Yes No meet point.

D. Wholesale services:

(1) Yes No residential;

(2) Yes No business;

(3) Yes No unbranded or rebranded call completion;

(4) Yes No unbranded or rebranded operator;

(5) Yes No unbranded or rebranded directory assistance.

E. Number portability: Yes No

Subp. 2. Notice of claim to rural exemption. A LEC, seeking to retain or establish a rural exemption under United States Code, title 47, section 251, subsection (f), paragraph (1), shall, no later than 20 days after receiving a CLEC's bona fide request for interconnection, services, or network elements under United States Code, title 47, section 251, notify the requesting company, the commission, the department, the Office of Attorney General—Residential Utilities Division (OAG—RUD), and the city clerk, or other official authorized to receive service or notice, of all municipalities within the LEC's designated service area, of its claim to the exemption. A LEC failing to assert its exemption claim as provided in this subpart is deemed to have waived any right it may have to the exemption for purposes of the specific bona fide request for which it has failed to assert the exemption. The notice must state:

A. the basis upon which the LEC considers itself to be a rural telephone company;

B. the basis upon which the LEC considers the CLEC's request to be unduly economically burdensome, technically infeasible, or inconsistent with United States Code, title 47, section 254, other than subsections (b), paragraph (7), and (c), paragraph (1), subparagraph (D), of that section; and

C. when and how to intervene, pursuant to part 7829.0800.

Subp. 3. CLEC response to exemption claim. An affected CLEC shall file any challenge to a LEC's exemption claim under subpart 2, including a request to terminate the exemption, within 20 days after receiving the LEC's notice under subpart 2.

Subp. 4. Discovery; parties. The following parties may seek discovery: the CLEC, the LEC, the commission, the department, the OAG—RUD, and any other entity granted intervenor status by the commission.

Subp. 5. Discovery request; proprietary information. The CLEC may seek discovery of the LEC before submitting a bona fide request. Once the CLEC has sought discovery or filed a bona fide request, any party may seek discovery of any other party. Before responding, a party may seek a commission order to protect its trade secrets and proprietary information within the meaning of part 7829.0500 from disclosure or use outside the scope of the proceeding.

Subp. 6. Discovery procedures; service and response. The parties may seek discovery by any means available under the Rules of Civil Procedure for the district courts of Minnesota, rules of the Office of Administrative Hearings, and standard public utilities commission practice, subject to the discretion of the commission. The response to any request for discovery must explain any refusal to provide the information requested. The request and the response must be served on all parties and filed with the commission. A party may request to meet with other parties to facilitate information exchange. Each party shall respond reasonably to the request and may be accompanied at a meeting by a representative, including an attorney representing the party.

Subp. 7. Discovery disputes. Discovery disputes must be resolved by the commission, or by the Office of Administrative Hearings if the commission has referred the matter to that office.

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Subp. 8. **Time frame for determination of request.** Within 120 days after a CLEC files a notice of its bona fide request, the commission shall determine whether to terminate or continue a rural exemption.

Subp. 9. **Standard for terminating exemption; burden of proof.** The commission shall terminate the exemption if the request is:

- A. not unduly economically burdensome;
- B. technically feasible; and

C. consistent with the universal service provisions of United States Code, title 47, section 254, other than subsections (b), paragraph (7), and (c), paragraph (1), subparagraph (D).

The burden of production and persuasion with respect to issues of material fact is on the incumbent LEC. The commission or arbitrator may shift the burden of production and persuasion as appropriate, based on which party has control of the critical information regarding the issue in dispute and which party is the proponent of the issue.

Subp. 10. **Exception for request from cable operator.** Notwithstanding subpart 9, the commission shall not grant a rural exemption with respect to a request from a cable operator providing video programming and seeking to provide telecommunications services in an area in which a rural telephone company is providing video programming unless the rural telephone company was providing video programming on February 8, 1996.

Subp. 11. **Implementation schedule.** A commission decision to deny or terminate an exemption must include a schedule for implementing the negotiation, arbitration, and agreement approval requirements of United States Code, title 47, section 252.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*

7811.2100 SUSPENDING, MODIFYING, INTERCONNECTION DUTIES.

Subpart 1. **Petition for suspension or modification.** A local exchange carrier (LEC) seeking suspension or modification of the application of the requirements of United States Code, title 47, section 251, subsection (b) or (c), pursuant to United States Code, title 47, section 251, subsection (f), paragraph (2), shall file a petition with the commission. The petition must include:

A. the legal name, address, and telephone number of the LEC and its designated contact person;

B. the name, address, and telephone number of the attorney if the LEC will be represented by an attorney;

C. the date of the filing, which is the date the commission receives the LEC's filing or the date designated by the LEC, whichever is later;

D. the proposed effective date of the suspension or modification sought by the LEC;

E. the signature and title of the LEC officer or representative authorizing the petition;

F. a description of the obligations the LEC seeks to suspend or modify, including:
(1) specific references to the relevant provisions of section 251, subsection (b) or (c), of the act;

(2) a copy of the relevant bona fide request, if the LEC seeks to suspend or modify the application of the requirement to negotiate; and

(3) a copy of the relevant commission-approved interconnection agreement, if the LEC seeks to suspend or modify the application of any portion of section 251, subsection (b) or (c), of the act, other than the requirement to negotiate;

G. a detailed description of the modifications or suspensions the LEC is seeking, including the proposed duration of each suspension or modification;

H. the number of subscriber lines the LEC has nationwide, at the holding company level, and the LEC's estimate of the total number of all LEC subscriber lines nationwide;

I. a statement supporting the petition, which must specify why each requested modification or suspension meets the conditions for modification or suspension specified in section 251, subsection (f), paragraph (2), subparagraphs (A) and (B), of the act, and applicable FCC regulations;

J. a statement as to whether the LEC requests the commission to grant a temporary stay under subpart 9 of the obligations the LEC seeks to modify or suspend; and

K. a statement of when and how to challenge the form or completeness of the petition, file initial and reply comments, and petition to intervene, pursuant to subparts 3 to 7.

Subp. 2. Filing and service. The petition filed under subpart 1 must be served on the department, the Office of Attorney General–Residential Utilities Division (OAG–RUD), each competitive local exchange carrier (CLEC) to which the requested suspensions or modifications would likely apply, and those persons on the applicable general service list established pursuant to part 7829.0600.

Subp. 3. Challenges to form and completeness. A challenge to the form or completeness of a petition filed under subpart 1 must be received by the commission and served on the LEC within ten days after the LEC's petition is filed. The LEC shall reply to the challenge within five days of the date it receives the filing challenging its petition.

Subp. 4. Rejection of filings. The commission shall reject a modification or suspension petition it finds to be substantially out of compliance with subpart 1 or 2. A modification or suspension petition is considered to be in substantial compliance with subparts 1 and 2 if the commission does not issue an order rejecting the petition within 45 days after the petition is filed.

Subp. 5. Initial comments. Comments on a modification or suspension petition must be filed with the commission within 20 days after the petition is filed. Initial comments must include a recommendation on the type of proceeding the commission applies to the petition and the reasons for the recommendation.

Subp. 6. Reply comments. Reply comments must be filed with the commission within ten days after the deadline for filing initial comments under subpart 5. Reply comments must be limited in scope to the issues raised in the initial comments.

Subp. 7. Petition to intervene. Petitions to intervene must be filed by the deadline for reply comments under subpart 6. An intervention petition may be combined with initial or reply comments filed under subpart 5 or 6.

Subp. 8. Nature of proceeding. Unless all parties agree to use a different procedure or there are no material issues of fact in dispute, the commission shall conduct an expedited proceeding under Minnesota Statutes, section 237.61, or refer the matter for a contested case proceeding under Minnesota Statutes, chapter 14.

Subp. 9. Stay of LEC obligations pending final disposition of petition. The commission may suspend enforcement of any of the obligations which the LEC's petition seeks to modify or suspend pending final disposition of the petition if, based on the standards applied by Minnesota courts for granting temporary injunctions, the commission determines that a suspension would be appropriate.

Subp. 10. Commission disposition. The commission shall decide the petition according to the requirements in section 251, subsection (f), paragraph (2), subparagraphs (A) and (B), of the act, and applicable FCC regulations.

Subp. 11. Time frame for disposition. The commission shall take final action on a petition within 180 days after receiving a petition that substantially complies with the filing requirements of subparts 1 and 2.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: 22 SR 2079

7811.2200 [Repealed, 25 SR 1677]

7811.2210 COMPETITIVE LOCAL EXCHANGE CARRIERS (CLECs).

Subpart 1. General scope of regulation. Competitive local exchange carriers (CLECs) are regulated as provided in this part.

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A. The commission shall exercise its regulatory authority over the local services provided by CLECs only to the extent provided for in, or necessary to implement the requirements of, all applicable statutes or this chapter. Except as provided otherwise in this part or other commission rules, the commission shall exercise its authority over a CLEC's local services only upon complaint under subpart 17 and will not require prior approval of a CLEC's tariffs or service offerings.

B. This part applies to a CLEC affiliate of an incumbent local exchange carrier (LEC) only with respect to its operations in geographic areas outside the service area of the affiliated LEC. A CLEC's local service operations inside the service area of its affiliated LEC must be regulated in the same manner as the LEC's local service operations, unless Minnesota Statutes, chapter 237 specifies otherwise or the commission grants a variance in the public interest. For the purpose of this subpart, the definition of an "affiliated CLEC" or "affiliated LEC" follows the definition of an "affiliated company" in Minnesota Statutes, section 237.65, subdivision 1.

Subp. 2. **Tariff filings.** For each local service offering, a CLEC shall file with the commission a tariff that contains the rules, rates, and classifications used by the CLEC in the conduct of its local service business, including limitations on liability. The tariff must be consistent with any terms and conditions in the CLEC's certificate of authority. The CLEC shall file six copies of its tariffs with the commission and shall serve one copy on the department and one copy on the Office of Attorney General – Residential Utilities Division (OAG–RUD). Amendments to the tariffs must be filed in the same manner. These filings are governed by the Minnesota Data Practices Act, Minnesota Statutes, chapter 13. Upon request, a CLEC shall provide a copy of its tariff or make its tariff available for review at a location convenient to the requesting person within five business days.

Subp. 3. **Tariff changes.** A CLEC may offer new local services or change the prices, terms, or conditions of existing local services by filing amendments to its tariffs in accordance with subpart 2. These tariff filings take effect as follows:

A. A new service, price decrease, promotion, or insubstantial change in the terms or conditions of a service may take effect immediately upon filing. A price decrease may take effect without notice to customers.

B. Except as provided in item C, a price increase, a substantial change in a term or condition of a service, or a discontinuation of a service other than basic local service may take effect 20 days after filing and providing written notice to affected customers as provided in subitems (1) and (2):

(1) The written notice of a price increase must be given in simple and clear language by bill insert, bill notice, or direct mail. To be simple and clear, the notice must bear the heading "NOTICE OF PRICE INCREASE."

(2) The written notice of a substantial change in a term or condition of service or of the discontinuance of a service other than basic local service must be given in simple and clear language by bill insert, bill notice, or direct mail. To be simple and clear, the notice must, at a minimum, bear a heading such as "NOTICE OF CHANGE IN TERMS" or "NOTICE OF DISCONTINUANCE," as appropriate.

C. Notwithstanding items A and B, the filing requirements for a CLEC must not be more stringent than the filing requirements governing any LEC with 50,000 or more subscribers in whose service area the CLEC is providing local service.

Subp. 4. **Cost information.** The commission shall not require a CLEC to file cost information unless the commission determines that cost information is needed to resolve a complaint alleging that the CLEC is violating a standard set forth in subpart 5 or 8.

Subp. 5. **Discrimination.** No CLEC may offer telecommunications service within the state on terms or rates that are unreasonably discriminatory. At a minimum, a CLEC must provide its telecommunications services in accordance with items A to D:

A. A CLEC shall charge uniform rates for local services within its service area. However, a CLEC may, upon a filing under subpart 2:

(1) offer unique pricing to certain customers or to certain geographic locations for promotions as provided in subpart 6;

(2) provide volume or term discounts;

(3) offer prices unique to particular customers, or groups of customers, when differences in the cost of providing a service, market conditions, or LEC pricing practices justify a different price;

(4) offer different prices in different geographic areas when (a) differences in the cost of providing a service, or market conditions, justify a different price; (b) the areas are served by different LECs; (c) different prices are charged by the LEC serving the areas; or (d) an area is not served by an LEC;

(5) pass through any legislatively authorized local taxes, franchise fees, or special surcharges imposed by local or regional governmental units on the services provided by the CLEC in specific geographic areas from which the taxes, fees, or surcharges originate; or

(6) furnish service free or at a reduced rate to its officers, agents, or employees in furtherance of their employment.

B. A tariff providing for prices unique to particular customers or groups of customers under item A, subitem (3), shall identify the service for which a unique price is available and the conditions under which the unique price is available.

C. In addition to the exceptions provided in item A, a CLEC may also charge different rates for local services within its service territory upon a prior finding by the commission that the CLEC has good cause to do so.

D. To the extent prohibited by federal law or the commission, a CLEC shall not give preference or discriminate in providing services, products, or facilities to an affiliate or to its own or an affiliate's retail department that sells to consumers.

Subp. 6. **Promotions.** A CLEC may promote the use of a local service by offering a waiver of part or all of the recurring or nonrecurring charge, a redemption coupon, or a premium with the purchase of a service. The promotion may be aimed at certain customers or to certain geographic locations. The customer group to which the promotion is available must be based on reasonable and nondiscriminatory distinctions among customers. Any single promotion in a given area must not be effective for longer than 90 days at a time. A promotion may take effect upon a tariff filing in accordance with subpart 2. The promotional tariff should include the dates of the promotion, prices, and a brief description of who is eligible for the promotion and the benefits, restrictions, and commitments of the promotion.

Subp. 7. **Packaging services.** A CLEC may offer local service as part of a package that may include goods and services other than telecommunications services. In addition to the tariff requirements that apply to the telecommunications elements of the package, the tariff must also contain a general description of the nontelecommunications components of the package. Nothing in this subpart is intended to give the commission or the department regulatory authority over the nontelecommunications services provided by a CLEC.

Subp. 8. **Prices.** A CLEC's local services are not subject to any rate or price regulation except that the commission may, upon complaint, order a CLEC to change a price or pricing practice or take other appropriate action if the commission determines, after an investigation under subpart 17, that:

A. the price or pricing practice unreasonably restricts resale in violation of Minnesota Statutes, section 237.121, paragraph (a), clause (5);

B. the price or pricing practice is unreasonably discriminatory in violation of subpart 5;

C. the price or pricing practice is deceptive, misleading, fraudulent as those terms are defined in state or federal law, or is otherwise unlawful under state or federal law;

D. the price or pricing practice will impede the development of fair and reasonable competition or reflects the absence of an effectively competitive market as determined on the basis of factors such as:

(1) the timely availability of comparable substitutes from other local service providers;

(2) the availability of facilities-based competitors; and

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(3) evidence of rivalrous price competition, as demonstrated by the existence of multiple competitors competing on price for the same or similar services; or

E. the price or pricing practice has caused or will result in substantial customer harm.

Subp. 9. Prohibited practices. A CLEC must comply with Minnesota Statutes, section 237.121, which proscribes certain conduct in the provision of telecommunications services.

Subp. 10. Interconnection. A CLEC must allow physical connections to its network and pay appropriate compensation for interconnection with and access to the networks of other local service providers as determined by the commission consistent with the requirements of the federal act.

Subp. 11. Commission approval to discontinue service or physical connection to another carrier. In accordance with Minnesota Statutes, section 237.74, subdivisions 6, paragraph (a), and 9, a CLEC must obtain prior commission approval before discontinuing a service or physical connection to a telephone company or a telecommunications carrier if end users would be deprived of service because of the discontinuance or disconnection.

Subp. 12. Public right-of-way. To the extent that a CLEC owns or controls, or seeks to own or control, a facility in the public right-of-way that is used or is intended to be used for transporting telecommunications or other voice or data information, the CLEC shall comply with Minnesota Statutes, sections 237.162 and 237.163, which provide for the use and regulation of the public rights-of-way.

Subp. 13. 911/TAM/TAP. Each CLEC is subject to Minnesota Statutes, sections 237.52 (Telecommunications Access Minnesota), 237.70 and 237.701 (Telephone Assistance Program), and 403.11 (911 Emergency Services). Amounts collected as surcharges under these sections must be remitted to the commissioner of public safety in the manner prescribed in Minnesota Statutes, section 403.11.

Subp. 14. Consumer protection laws on disclosure, antislamming, cramming. A CLEC shall comply with the requirements of Minnesota Statutes, sections 237.66, 237.661, and 237.663.

Subp. 15. Regulatory expense assessment. A CLEC is subject to assessment by the department for the regulatory expenses of the department and the commission, as provided by Minnesota Statutes, section 237.295.

Subp. 16. Mergers and acquisitions. In accordance with Minnesota Statutes, section 237.74, subdivision 12, before acquiring ownership or control of any provider of local service in Minnesota, either directly or indirectly, a CLEC must demonstrate to the commission that the present or future public convenience and necessity require or will require the acquisition. To make this determination, a CLEC must show that the merger is consistent with the public interest, based on such factors as the potential impact of the merger on consumers, competition, rates, and service quality.

Subp. 17. Investigations and complaints; proceedings. Investigations and complaints regarding CLEC compliance with this chapter are governed by items A to H.

A. After giving notice to the CLEC, the commission may investigate any matter brought forth under its own motion or raised in a complaint against a CLEC of a possible violation of this chapter. A complaint may be brought by a telephone company; by a telecommunications carrier; by the department; by the OAG-RUD; by the governing body of a political subdivision; or by no fewer than five percent or 100, whichever is the lesser number, of the subscribers or spouses of subscribers of the CLEC.

B. If, after an investigation, the commission finds that a significant factual issue has not been resolved to its satisfaction, the commission may order that a contested case hearing be conducted under Minnesota Statutes, chapter 14, unless the complainant, the CLEC, and the commission agree that an expedited hearing under Minnesota Statutes, section 237.61 is appropriate, or the commission orders an expedited proceeding under Minnesota Statutes, section 237.462, subdivision 6.

C. In any complaint proceeding authorized under this subpart, the CLEC bears the burden of proof, unless:

(1) the complaint alleges the CLEC's prices fail to satisfy the price uniformity requirements of subpart 5, item A, in which case the burden is on the complainant to prove that the price differences are not justified; or

(2) the commission determines that the burden should be placed on the complainant based on factors such as which party has control of critical information regarding the issue in dispute.

D. A full and complete record must be kept by the commission of all proceedings before it upon any formal investigation or hearing. All testimony received or offered must be taken down by a stenographer appointed by the commission and a transcribed copy of the record furnished to any party to the investigation upon paying the expense of furnishing the transcribed copy.

E. If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tariffs, charges, schedules, or practices violate an applicable provision of this chapter, the commission shall take appropriate action, which may include ordering the CLEC to:

- (1) change the rate, tariff, charge, schedule, or practice;
- (2) make the service reasonable, adequate, or obtainable; or
- (3) take other appropriate action.

F. A copy of an order issued under this subpart must be served upon the person against whom it is directed or the person's attorney, and notice of the order must be given to the other parties to the proceedings or their attorneys.

G. A party to a proceeding before the commission or the OAG-RUD may make and perfect an appeal from the order in accordance with Minnesota Statutes, chapter 14.

H. This subpart does not preclude the parties from pursuing voluntary mediation, arbitration, or other alternative dispute resolution. Upon the filing of a complaint, the commission may vary deadlines to allow for voluntary dispute resolution by the parties. However, in accordance with part 7829.1600, if the complainant desires formal action by the commission, the commission shall resolve the dispute.

Subp. 18. Enforcement; penalties and remedies. A CLEC is subject to the penalties and remedies provided in Minnesota Statutes, sections 237.461, 237.462, and 237.74, subdivision 11.

Subp. 19. Annual reports. On or before May 1 of each year, a CLEC shall complete and return to the department the annual report form prepared by the department.

Statutory Authority: *MS s 216A.05; 237.10; 237.16*

History: *25 SR 1677; L 2003 1Sp1 art 2 s 104; L 2004 c 228 art 1 s 74*

7811.2300 RULE REVIEW AND REVISION.

The commission shall appoint a task force no later than July 1, 2002, to evaluate the provisions in this chapter and determine whether any provisions of this chapter should be revised or deleted. The task force shall make its recommendations to the commission within six months after the date it is appointed. As a result of the task force recommendations, the commission may propose revisions to this chapter or any other related rules.

Statutory Authority: *MS s 237.10; 237.16; 237.71*

History: *22 SR 2079*