

CHAPTER 7812
PUBLIC UTILITIES COMMISSION
TELECOMMUNICATIONS; LARGE
LOCAL PROVIDERS

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7812.0050 APPLICABILITY.

This chapter applies to all telecommunications service providers operating under the commission's jurisdiction in Minnesota, except regarding the provision of local telephone service in any area served by a telephone company that:

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

B. the commission certificated to provide local telephone services before January 1, 1988.

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

History: 22 SR 46; 22 SR 2079

7812.0100 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 No. 104-104, codified in United States Code, title 47, sections 153 to 614.

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 7812.0200 to 7812.0500.

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 7812.0600 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. 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 2, 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 Public Service.

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. This includes, but is not limited to, 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 7812.0600. 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 a 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. Network elements include, but are not limited to, the local loop, switching functions, ports, and trunks.

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 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 7812.0200.

Subp. 44a. [Repealed, 22 SR 2079]

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 2.

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:

A. with respect to a rural telephone company, 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); or

B. the exchange area, or a different geographic unit identified by the commission under part 7812.1400, subpart 3, of a local exchange carrier unless the commission has found the local exchange carrier to be a rural telephone company.

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

History: *22 SR 46; 22 SR 2079*

7812.0150 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.

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

History: *22 SR 46*

7812.0200 GENERAL CERTIFICATION REQUIREMENTS.

Subpart 1. **Scope.** No person may provide telecommunications service in areas served by local exchange carriers with 50,000 or more subscribers in Minnesota without first obtaining a certificate under this part and parts 7812.0300 to 7812.0600, except to the extent the person is providing telephone service under a certificate issued by the commission before July 28, 1997.

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 plans to provide local service in the area, either through resale, the purchase of unbundled network elements, or use of its own facilities, within 36 months after the date of the applicant's petition. A certificate for local service obtained under part 7812.0300 or 7812.0350 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 7812.0300, subpart 5, or 7812.0350, subpart 5.

Subp. 3a. **Reporting service area status.** Each local service provider (LSP) shall report to the commission within 30 months after the later of the three dates specified in part 7812.0200, subpart 4, items A to C, regarding the extent to which it is offering local service in its service area. The report must identify the portions of the LSP's service area, if any, that remain nonoperational and must provide a projected timetable for offering local service throughout the entire service area as required under subpart 4.

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Subp. 4. **Automatic revocation for failure to serve.** The local service provider (LSP) certified under part 7812.0300 or 7812.0350 must offer services, consistent with part 7812.0600, throughout its entire local 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;

B. the date of the commission order under part 7812.1100, approving the necessary agreements resulting from the negotiations that provided the basis under subpart 3, item A, for granting the certificate; or

C. July 28, 1997. Failure to offer basic local service throughout the entire service area as required in this subpart results in the automatic revocation of the local service provider's certificate with respect to those areas in which the LSP is not offering basic local service, unless the LSP demonstrates to the satisfaction of the commission, under subpart 5, that its failure to offer basic local service throughout the entire service area results from factors beyond the local service provider's control.

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 within its entire local service area as required under subpart 4. The petition must be filed at least 90 days before the applicable 36-month 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 36-month deadline. The local service provider's certification for the portion of its local service area in which it does not offer basic local service does not expire until the commission has issued an order denying the local service provider's request for an extension under this subpart.

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 petitioner'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 petitioner'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 216A.05; 237.10; 237.16; 237.71*

History: *22 SR 46; 22 SR 2079*

7812.0300 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 petitioner'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; and

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.

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;

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 petitioner'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 reasonably adequate 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. Failure to offer service in the nonoperational areas by the deadline under part 7812.0200, subpart 4, results in the automatic revocation of the local service provider's certificate with respect to those nonoperational areas as provided in part 7812.0200, subparts 4 and 5.

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 petitioner's proposed service area changes. The petition must be served on the parties identified in part 7812.0200, 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 petitioner 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 216A.05; 237.10; 237.16*

History: 22 SR 46

7812.0350 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 7812.0300, subpart 2, items A to L, except for the information relevant to facilities-based service identified or contemplated in part 7812.0300, 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 petitioner 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 7812.0300, subpart 3, to the extent those criteria relate to the applicant's technical, managerial, and financial ability to provide reasonably adequate resale service.

Subp. 4. **Conditional certificate.** The commission may grant a conditional certificate for local resale service as provided in part 7812.0300, subpart 4.

Subp. 5. **Amended certificate for change in service area.** A reseller may expand its service area as provided in part 7812.0300, subpart 5.

Subp. 6. **Changes in terms and conditions.** A reseller may change its terms and conditions of service as provided under part 7812.0300, subpart 6.

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

History: 22 SR 46

7812.0400 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 7812.0350.

Subp. 2. **Decision criteria.** The commission shall apply the decision criteria identified in part 7812.0300 or 7812.0350 to the extent those criteria are relevant to providing interexchange service.

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

History: 22 SR 46

7812.0500 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 petitioner'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.

Subp. 2. **Decision criteria.** The commission shall apply the criteria identified in part 7812.0300 or 7812.0350 to the extent those criteria are relevant to providing the local niche services the petitioner intends to provide.

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

History: 22 SR 46

7812.0550 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), Department of Administration, 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, at a minimum, 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; and

K. provide for operator-assisted emergency calls, including calls from speech-impaired, hearing-impaired, or non-English speaking customers.

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

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

History: *22 SR 46; 22 SR 2079*

7812.0600 BASIC 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; and

J. telecommunications relay service capability or access necessary to comply with state and federal regulations.

Subp. 2. **Separate flat rate service offering.** At a minimum, 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 7812.0300 or

7812.0350, 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 7812.0300, subpart 4, or 7812.0350, 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 from the service areas of local exchange carriers (LECs).

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 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 7810.2000, except that it shall not disconnect basic local service for nonpayment of toll or information service charges or any service other than basic local service.

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

History: 22 SR 46

7812.0700 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, paragraphs (b) and (c), 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 216A.05; 237.10; 237.16*

History: 22 SR 46

7812.0800 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 7812.0900, 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 216A.05; 237.10; 237.16*

History: 22 SR 46

7812.0900 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 July 28, 1997, 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 7812.0800, 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,

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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 216A.05; 237.10; 237.16*

History: *22 SR 46*

7812.1000 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 216A.05; 237.10; 237.16*

History: *22 SR 46*

7812.1100 NOTICE AND DISCLOSURE OF CALLING AREA OFFERINGS.

New calling area offerings that differ from the calling area authorized under part 7812.0900, 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 7812.0900, 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 7812.0900, 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 7812.0900, 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 216A.05; 237.10; 237.16*

History: *22 SR 46*

7812.1200 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 216A.05; 237.10; 237.16*

History: *22 SR 46*

7812.1300 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 7812.0600, 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 216A.05; 237.10; 237.16*

History: *22 SR 46*

7812.1400 ETC DESIGNATION.

Subpart 1. **Automatic designation of LECs.** On and after July 28, 1997, 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 July 28, 1997, 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 shall 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 7812.0100, subpart 15. 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 commission shall determine whether the LEC serving the area for which the CLEC seeks designation to receive universal service support is a rural telephone company if the competitive local exchange carrier's petition or another party's initial comments under subpart 8 assert that the LEC is a rural telephone company. If the applicable LEC has 50,000 or more subscribers and is not found by the commission to be a rural telephone company, the commission shall designate the local exchange carrier's exchange area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.

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 7812.0700.

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, 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 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 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 there are no unresolved issues of fact, 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. Unserved 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 7812.0100, subpart 15.

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

History: 22 SR 46; 22 SR 2079

7812.1500 INTERCARRIER NEGOTIATIONS GENERALLY.

Subpart 1. **Definitions.** The following definitions apply to parts 7812.1500 to 7812.1900:

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 7812.1700.

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 7812.1700 or 7812.1800.

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 7812.1600.

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 7812.1700 or 7812.1800.

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 7812.1700, and (3) approval proceedings under part 7812.1800, 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 request for negotiation 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 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 216A.05; 237.10; 237.16*

History: 22 SR 46

7812.1600 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 request for negotiation was made;

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;

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; and

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

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 7812.1700 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 7812.1700, they shall notify the commission in writing of this agreement. The mediator is deemed to have been designated to conduct the arbitration effective upon commission receipt of the written notice.

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

History: 22 SR 46

7812.1700 ARBITRATION OF INTERCARRIER NEGOTIATIONS.

Subpart 1. **Request to arbitrate.** During the period from the 135th day to the 160th day, inclusive, after the date on which an incumbent local exchange carrier (LEC) receives a request to negotiate under section 252, subsection (a), of the act, 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 request for negotiation 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;
- 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; and

R. any request for consolidation under subpart 12.

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 7812.1500, 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 7812.1600, 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 7812.1600, 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 7812.1500, 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 and set any reasonable limits on the type, scope, or extent of discovery as needed to avoid delay or undue hardship on a party. The arbitrator's authority includes, but is not limited to, authority to set deadlines for responses to discovery requests and to limit the number of questions permitted in any written depositions or interrogatories.

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 request for negotiation that gave rise to the arbitration. 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 or the record.

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 35 days after the arbitrator issues the recommended decision. 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 7812.1800.

Subp. 22. Decision criteria. Issues submitted for arbitration must be resolved consistent with the public interest, to ensure compliance with the requirements of

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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 burden 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 216A.05; 237.10; 237.16*

History: 22 SR 46

7812.1800 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 7812.1700, 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 7812.1500, 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. Parties and participants may file written comments on the filing under subpart 1 no later than ten 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 7812.1700, subpart 21, or meet the arbitration standards set forth in part 7812.1700, subpart 22.

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.

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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 7812.1500 to 7812.1800.

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

History: *22 SR 46; 22 SR 2079*

7812.1900 DISPUTES ARISING UNDER EXISTING AGREEMENTS.

Disputes arising in the implementation of an agreement must be submitted to the commission for arbitration under part 7812.1700, unless the agreement provides a different mechanism for resolving those disputes.

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

History: *22 SR 46*

7812.2000 RURAL EXEMPTION CLAIM; NOTICE, PROCEEDINGS.

Subpart 1. **Notice of claim to rural exemption.** A local exchange carrier (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 competitive local exchange carrier's (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, and the Office of Attorney General-Residential Utilities Division (OAG-RUD), 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 the basis upon which the LEC considers itself to be a rural telephone company.

Subp. 2. **CLEC response to exemption claim.** An affected competitive local exchange carrier (CLEC) shall file any challenge to a LEC's exemption claim under subpart 1, including a request to terminate the exemption, within 20 days after receiving the LEC's notice under subpart 1.

Subp. 3. **Commission decision.** The commission shall determine a LEC's eligibility for an exemption asserted under subpart 1, including whether the exemption should be terminated, as provided in United States Code, title 47, section 251, subsection (f), paragraph (1), and applicable FCC regulations. 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 216A.05; 237.10; 237.16; 237.71*

History: *22 SR 46; 22 SR 2079*

7812.2100 SUSPENDING, MODIFYING INTERCONNECTION DUTIES.

Subpart 1. **Petition for suspension or modification.** A local exchange carrier (LEC) seeking suspension or modification 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;

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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 specific references to the relevant provisions of section 251, subsection (b) or (c), of the act;

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; and

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.

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 an applicable general service list established by the commission.

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 or SLEC'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 216A.05; 237.10; 237.16; 237.71*

History: *22 SR 46; 22 SR 2079*

7812.2200 REGULATORY TREATMENT OF CLECS.

Unless provided otherwise in this chapter, the local services provided by a competitive local exchange carrier (CLEC) are subject to Minnesota Statutes, chapter 237, and the commission's rules in the same manner as the local services provided by a local exchange carrier (LEC), except that the CLEC is not subject to Minnesota Statutes, section 237.22, and is not subject to rate-of-return regulation or earnings investigations under Minnesota Statutes, section 237.075 or 237.081. A competitive local exchange carrier's local services are also subject to Minnesota Statutes, section 325F.692.

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

History: *22 SR 46*

7812.2300 RULE REVIEW AND REVISION.

The commission shall appoint a task force no later than January 2, 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 216A.05; 237.10; 237.16*

History: *22 SR 46*