

In the Matter of a Proposed Filing by
Northwestern Bell Telephone Company to
Increase Its Rates for Private Line Service

ISSUE DATE: **November 5, 1987**

DOCKET NO. P-421/M-86-508

ORDER DENYING PETITION FOR
RECONSIDERATION

PROCEDURAL HISTORY

On July 9, 1987, the Minnesota Public Utilities Commission (the Commission) issued its Findings of Fact, Conclusions of Law and Order (July 9 Order) in the above-entitled proceeding. On July 20, 1987 Northwestern Bell Telephone Company (NWB or the Company) filed with the Commission a petition for reconsideration of the Commission's July 9 Order.

The Commission received replies to NWB's petition for reconsideration from the Department of Public Service (DPS) on July 31, 1987, and from the Residential Utilities Division of the Office of the Attorney General (RUD-AG) and the Minnesota Business Utility Users Council (MBUUC) on August 3, 1987.

FINDINGS AND CONCLUSIONS

The issue before the Commission is whether to grant NWB's petition for reconsideration.

NWB raised seven issues on reconsideration. The first issue raised by NWB was the adequacy of the cost studies submitted by the Company in support of its proposed rates. NWB argued that there were no significant deficiencies in the Company's cost studies and that the Commission should have approved the cost studies and proposed rates.

The DPS, the RUD-AG and the MBUUC replied that the Commission's decision rejecting NWB's filing was supported by record evidence. The RUD-AG and the MBUUC also stated that NWB had not presented any new arguments which would cause the Commission to reconsider its prior decision.

In its July 9 Order, the Commission found that NWB used an inappropriate costing methodology

The second issue raised by NWB was modifications to its cost studies. NWB stated that if the Commission continued to reject the Company's costing methodology, the Commission should at least approve rates which reflected the DPS's recommended modifications to NWB's cost studies. According to NWB, the adjustments proposed by the DPS related to the deregulation of inside wire, a discount for disconnection charges, the cost of capital, depreciation, the federal income tax rate, the costs for spare capacity, and the capital cost for distribution plant.

The DPS, the RUD-AG and the MBUUC argued that adjustments to NWB's cost studies would not generate appropriate incremental costs because the underlying cost study would still be flawed.

In its July 9 Order, the Commission found that the main dispute in this proceeding was whether NWB used an appropriate incremental costing methodology in developing its proposed rates. The Commission found that the Company's proposed rates reflected replacement costs rather than incremental costs. The Commission concluded that NWB's proposed rates were not just and reasonable based on either cost or non-cost factors.

Third, NWB stated that in the special access case (November 26, 1986 Findings of Fact, Conclusion of Law and Order in Docket No. P-421/M-86-53) the Commission approved NWB's use of incremental costs for pricing purposes in a miscellaneous filing. NWB also stated that it acted in accordance with Minn. Stat., Section 237.075, in submitting its cost studies and that the Commission gave no notice that it was going to apply any new standards to incremental costing of dedicated facilities at the time NWB filed its cost studies in this proceeding.

In their replies, the DPS and the RUD-AG stated that there was insufficient evidence in the record that NWB used the same incremental costing methodology in this proceeding as it did in the special access case. The DPS also stated that the Commission had not mandated a particular cost study methodology in the special access case or any other previous decisions. The MBUUC argued that in the July 9 Order the Commission rejected the argument that it must accept NWB's cost study on the basis of the special access order.

The Commission stated in the July 9 Order at page 7:

The Commission also rejects NWB's argument that because it adopted the Company's cost study methodology in the special access proceeding it must do so here. The Commission's decision in the special access case was appropriately based on the record of that proceeding. The Commission's decision in this case must be based on the record developed in this proceeding rather than upon the record developed in the special access case.

The fourth issue raised by NWB related to the Commission's requirement that NWB submit an embedded cost study in future private line filings. NWB argued that the Commission rejected the Company's incremental cost study because NWB did not submit an embedded cost study in this

The DPS, the RUD-AG and the MBUUC replied that the absence of an embedded cost study was not the reason the Commission rejected NWB's cost studies. These three parties also argued that the Commission's requirement that the Company submit an embedded cost study in future private line filings was appropriate.

The Commission's July 9 Order, at page 7, stated:

To aid the Commission and all parties in determining the appropriateness of future proposed private line rates, the Commission finds that NWB should submit an embedded cost study in future private line filings or refilings. However, the Commission emphasizes that it is not adopting the position that rates should be based on embedded cost. Rather, the Commission needs this information to ensure that proposed rates will cover their embedded cost.

The fifth issue raised by NWB on reconsideration was the six proposals for tariff simplification and consolidation proposed by the Company. NWB argued that, given the absence of any true dispute as to these structural changes, the Commission should have approved the changes whether or not the Commission approved the proposed private line rates. NWB also stated that if it should possibly receive some minor increase in net revenue as a result of the modifications, it would reduce its common carrier line charge (CCLC) by that amount to insure revenue neutrality.

The DPS and the MBUUC argued that the Commission appropriately treated the proposed tariff modifications in the July 9 Order. The DPS stated that the supposedly uncontested tariff proposals are too interwoven with disputed proposals to permit their proper evaluation in this proceeding. The DPS also said that requiring NWB to propose these noncontroversial modifications in a separate filing would not prejudice the Company.

The MBUUC stated that the proposed modifications were reviewed by NWB and the parties in light of the proposed private line rates and that the record lacked information regarding the modifications under the existing rates. The MBUUC explained that the Company is not even able to determine the revenue impact of the proposed modifications because NWB stated that if it should possibly receive some minor increase in net revenue as a result of the modifications it would reduce its CCLC as it has proposed all along.

The Commission stated at page 12 of its July 9 Order:

The Commission's concern is that these modifications were reviewed by NWB and the parties in light of the proposed private line rates which, as discussed above, will be rejected by the Commission. The Commission finds that the record lacks information regarding the proposed modifications under the existing rates. The Commission concludes that it will reject NWB's proposed modifications to its private line tariff at this time. NWB may refile the proposed modifications in a separate miscellaneous filing with information regarding the relationship and the effect of the modifications to the current rates.

methodology has imposed new requirements and substantial additional burdens on the Company shortly before the combined filing is to be made.

The DPS stated that filing requirements such as those contained in the July 9 Order are commonplace in Commission orders. If NWB is unclear as to the meaning of any of the filing requirements prescribed in the Order, NWB should seek clarification of those requirements. The DPS also said there is no basis in the record for NWB's suspicion that the Commission will ignore relevant information the Company provides in a future proceeding.

The RUD-AG stated that NWB's assertion that the Commission's suggestions prejudice the combined filing are nonsense. When an adjudicatory body makes a decision it often discusses the weaknesses of a litigant's case in terms of what evidence or which facts would satisfy the relevant legal theory. This practice is not prejudgment but rather analysis, according to the RUD-AG.

The MBUUC said that a fair reading of the July 9 Order does not support the Company's view that the Commission is improperly prejudging future proceedings and imposing vague and ambiguous future filing requirements. If NWB is unclear on what is meant by embedded costs and market studies, said the MBUUC, the Company should ask the Commission for clarification. Finally, the MBUUC stated that if NWB cannot meet the timetable for the combined filing, the appropriate recourse would be to seek an extension of time.

As discussed above, the Commission stated in its July 9 Order that it is not adopting the position that rates should be based on embedded costs, but that it needs this information to ensure that proposed rates will cover their embedded costs. With regard to an incremental cost study, the Commission stated at page 11 of the July 9 Order:

Finally, by directing NWB to use the DPS's suggestions in its cost study, the Commission would not be precluding NWB from submitting a cost study of its own choosing. In view of the Commission's conclusions regarding the cost study filed by NWB in this proceeding, the Commission is merely attempting to provide some guidance to NWB as to what the Commission would likely consider reasonable for the cost study in the combined filing.

The final issue raised by NWB was an allegation that the Commission considered non-record information in this proceeding. The Company stated that the Commission considered Dr. Nelson Updaw's alleged qualifications which were never introduced and admitted at hearing. Additionally, NWB argued that during deliberations, a Commissioner discussed his recollections of the Company's last private line proceeding. NWB stated that no part of the record in that prior case was ever introduced into evidence as part of this proceeding.

With regard to NWB's arguments concerning Dr. Updaw's qualifications, the DPS replied that the Company overlooked the fact that the Commission could take official notice of his qualifications under Minn. Stat., Section 14.60, subd. 4 (1986). In response to NWB's statements that a Commissioner discussed the Company's last private line proceeding which was not a part of the

decision.

The MBUUC stated that the Commission did appropriately consider non-record evidence in this proceeding concerning Dr. Updaw's qualifications and a Commissioner's comments on the 1981 private line case. NWB failed to consider the Commission's right to take notice of certain facts and the ability of the individual Commissioners to rely upon their own expertise.

The Commission finds that during its deliberations in this proceeding, it took proper notice of Dr. Updaw's qualifications, as provided in Minn. Stat., Section 14.60, subd. 4 (1986). While NWB argued that the material on Dr. Updaw's qualifications was non-record material, NWB did not contest the information contained in that material. The Commission also finds that it regularly relies on Dr. Updaw's recommendations on depreciation issues. Finally, the Commission finds that it rejected NWB's proposed private line rates because NWB had not met its burden of proof that the proposed rates were just and reasonable based on either cost or non-cost factors. Therefore, while the Commission has recognized Dr. Updaw's expertise regarding depreciation matters, NWB's filing was denied for reasons unrelated to the determination of depreciation expense.

In response to the second instance cited by NWB, the Commission agrees that a Commissioner did make brief comparisons of the Company's last private line case with the present proceeding. That Commissioner was the administrative law judge that heard NWB's last private line case and his comments were based on his personal expertise. The Commission finds that NWB has failed to demonstrate that any reference by the Commissioner to the earlier private line case amounted to improper reliance on that proceeding or that the reference played a role in the Commission's decision.

The Commission finds that NWB's petition for reconsideration did not raise any issues not fully considered in the July 9, 1987 Order. Therefore, the Commission concludes that NWB's petition for reconsideration should be denied.

ORDER

1. Northwestern Bell Telephone Company's petition for reconsideration of the Commission's July 9, 1987 Order is hereby denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen

