

P-999/C-88-615 GRANTING PETITION AND REQUIRING FILING

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of the Petition of the Office of Attorney General for an Order Concerning Geographically Deaveraged Long-Distance Rates

ISSUE DATE: November 23, 1988

DOCKET NO. P-999/C-88-615

ORDER GRANTING PETITION AND
REQUIRING FILING

PROCEDURAL HISTORY

On September 6, 1988, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG) filed a Petition with the Minnesota Public Utilities Commission (the Commission). The Petition asked that the Commission order any telephone companies that charge geographically deaveraged long distance rates in Minnesota who have elected to be regulated under Minn. Stat. Sec. 237.58 (Supp. 1987) to stop charging such rates because they are unlawful under Minn. Stat. Sec. 237.60, subd. 3 (Supp. 1987). Further the Petition asked the Commission to order any other telephone companies charging deaveraged long distance rates in Minnesota who have not elected under Minn. Stat. Sec. 237.58 (Supp. 1987) to show cause why such non-uniform rates are just and reasonable under Minn. Stat. Sec. 237.06 (1986) and policies the Commission has articulated in earlier Orders. In the Matter of a Consolidated Proceeding to Investigate Services Within the State of Minnesota, Docket No. P-442, P-443, P-444, P-421, P-433/NA-84-212 (212 Order), October 15, 1985; In the Matter of a Summary Investigation into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service within the State of Minnesota, Docket No. P-999/CI-85-582 (582 Order), November 2, 1987.

On September 20, 1988, the Commission notified all telephone companies in Minnesota that it would consider the RUD-OAG Petition on October 19, 1988 and sent a copy of the Petition to them. Comments were requested by October 3, 1988.

Comments were received from the following: the Minnesota Department of Public Service (Department or DPS), the Minnesota Independent Coalition, National Teleservice, Mid American Long Distance Company, and Red Wing Long Distance Company. Northwestern Bell Telephone Company and AT&T Communications of the Midwest, Inc. did not submit comments on the Petition but asked to be on the service list for this matter.

The RUD-OAG filed a Response to the comments on October 17, 1988.

The Commission met on October 19, 1988 to consider the RUD-OAG Petition and the comments on it.

FINDINGS AND CONCLUSIONS

Minn. Stat. Sec. 237.06 (1986) requires that all telephone rates be fair and reasonable. It states in relevant part:

It shall be the duty of every telephone company to furnish reasonably adequate service and facilities for the accommodation of the public, and its rates, tolls, and charges shall be fair and reasonable for the intrastate use thereof. All unreasonable rates, tolls, and charges are hereby declared to be unlawful.

Companies That Are Regulated Under Minn. Stat. Secs. 237.58, et seq

In addition, the Legislature has specifically prohibited geographically deaveraged toll rates for those companies which have elected to be subject to the lessened regulation of Minn. Stat. Secs. 237.58, et seq. (Supp. 1987). Minn Stat. Sec. 237.60, subd. 3 (Supp. 1987) provides in part:

A company that offers long-distance services shall charge uniform rates and charges on all long-distance routes and in all geographic areas in the state where it offers the services.

Therefore, the Commission finds that it is expressly unlawful for companies subject to Minn. Stat. Sec 237.60 to charge non-uniform long-distance rates.

The Commission finds that five companies who are specifically governed by Minn. Stat. Sec. 237.60 (Supp. 1987) are charging geographically deaveraged rates in violation of the law. Those companies are: Access Plus, American Sharecom, LDB Corp., Mid American Long Distance and Rochester Telecom Systems.

Minn. Stat. Sec. 237.081, subd. 4 (1986) authorizes the Commission whenever it finds that any rates are unreasonable or unjustly discriminatory to order just and reasonable rates. Here, the Commission will order those companies to cease charging such unlawful rates and refile tariffed rates that comply with Minn. Stat. Sec. 237.60, subd. 3 (Supp. 1987) within 60 days of this Order. The Minnesota Department of Public Service will review these filings for compliance with Minn. Stat. Sec. 237.60, subd. 3 (Supp. 1987). Diane Dietz of the Department's staff will be available to answer questions any of the companies' may have regarding the requirement that long-distance rates and charges be uniform in all geographic areas served by the Company. Her telephone number is (612) 297-3375.

Companies That Are Not Regulated Under
Minn. Stat. Secs. 237.58, et seq.

The Commission has a well established policy against geographically deaveraged telephone rates. It was first articulated in the Commission's October 15, 1985 Order in the 212 case at pp. 21-22:

The ALJ has noted the inherent vulnerability of ratepayers in non-competitive areas, and the possible violation of the antidiscrimination provisions of Minn. Stat. Sec. 237.09, which would result from geographic deaveraging of toll rates. Without competition in rural areas, neither AT&T/MW nor NWB will have any incentive to lower toll rates for rural areas. Rather, toll rates in non-competitive areas could be used to subsidize lower rates in competitive areas unless geographic deaveraging is prohibited. The consequence would be to injure competition as well as burden rural citizens with higher costs of telephone service. Such predatory and discriminatory pricing is contrary to Minn. Stat. Secs. 237.09 and 237.21, and to the public interest.

Further, without averaging of rates, rural ratepayers could be deprived of even an indirect benefit of price competition and innovative services resulting from competition. The subscriber least able to obtain the benefits from the competitive services authorized here will be the residential subscriber in rural areas. Prohibiting geographic deaveraging of toll rates may be one of the last means of protecting subscribers in small communities and rural areas from any detriment effects of competition. Where rate deaveraging is prohibited, the rates set in response to competitive forces will necessarily have to be charged to all customers including rural subscribers who are not given the choice of multiple interexchange carriers. To the extent competition results in lower rates, the lower rates will reach rural areas as well as the largest cities and urban areas in the state. Thus, in order to assure that the competitive effects on toll rates reach all customers, geographic rate averaging is found to be necessary.

The Commission went on to note that "unless compelling circumstances are presented, and benefits that reach all ratepayers can be shown, the Commission is not likely to approve rate deaveraging". 212 Order at 22.

The Commission repeated its anti-geographic deaveraging policy in the 582 Order of November 2,

1987.

The Commission finds that no arguments were presented in this proceeding to persuade it to change its policy against geographic toll rate deaveraging. . . . The Commission's policy has been affirmed in principle by the legislature and a change by the Commission clearly would not be appropriate in light of this recent law. Further, in response to NWB's arguments, the Commission would point out that one purpose of the law is to constrain laissez-faire economic behavior of unrestrained competition in order to accomplish desirable social ends. Protecting rural telephone users in the area of increased competition is clearly such a desirable goal. 582 Order at 50.

To address issues raised by the 212 and 582 Orders and recent legislation, the Commission began a rulemaking on deaveraging rates (Docket No. P-999/R-88-208) by soliciting outside opinion in April, 1988. This rulemaking remains in its early stages.

During the pendency of this rulemaking seven companies which are not governed by Minn. Stat. Sec. 237.60 (Supp. 1987) were allowed to implement non-uniform long-distance rates subject to the adopted rules. Commission rulemaking (Docket No. P-999/R-88-208) on deaveraged rates. Those companies are: Brainerd Telecom Ltd., Econocall, National Teleservice, Red Wing Long Distance, Telephone Associates Long Distance, Advanced Business Telephone, and North Central Telecom.

While the Commission will continue with its rulemaking, it is convinced that it cannot wait for the rulemaking to be concluded to address the issues raised in the RUD-OAG's Petition. The Commission finds that permitting non-electing companies to deaverage rates will put electing companies who are prohibited from doing so at a competitive disadvantage, can harm rural customers and small communities, and will defeat the legislative purpose of encouraging competition through the new regulatory process of Minn. Stat. Secs. 237.58, et seq. Principles of fairness demand that electing and non-electing companies meet the same set of standards. The Commission will proceed on a case-by-case basis to analyze the reasonableness of the rates of these seven companies.

Pursuant to its authority under Minn. Stat. Sec. 237.081, subds. 1 and 4 (1986), the Commission may, on its own motion, investigate any matter relating to telephone service and, based on that investigation, order just and reasonable rates. This law authorizes the Commission to examine the geographically non-uniform toll rates of companies not subject to Minn. Stat. Sec. 237.60 (Supp. 1987) and, upon determining them to be unjust and unreasonable, order such companies to charge geographically uniform long-distance rates. The Commission will order the seven companies listed above who have de-averaged rates and have not elected to be regulated under Minn. Stat. Secs. 237.58, et seq. (Supp. 1987) to cease charging deaveraged rates and to file geographically averaged rates, or to appear and show good cause why such non-uniform rates are just and reasonable within 60 days of this Order. Diane Dietz of the Department of Public Services's staff will be available to answer questions any of the companies may have regarding filing long distance rates that are uniform in all areas served by a company. Her telephone number is (612) 297-3375.

Rulemaking

The Commission will continue with its rulemaking in Docket No. P-999/R-88-208 because it provides a forum for addressing a wide scope of issues related to Minn. Stat. Sec. 237.60, subd. 3 (Supp. 1987). Further the Commission will convene an Advisory Task Force to work on the rules. The Commission has found that while this approach may not avoid a rules hearing, a task force is helpful in narrowing the issues that may go to hearing and allow all viewpoints to be carefully heard and considered in a nonadversarial environment.

ORDER

1. The Petition of the Residential Utilities Division of the Office of the Attorney General is hereby granted.
2. Within 60 days of this Order the following companies shall cease charging geographically deaveraged long distance rates within Minnesota and refile tariffed rates, consistent with Minn. Stat. Sec. 237.60, subd. 3 (Supp. 1987):
 1. Access Plus;
 2. American Sharecom;
 3. LDB Corp.
 4. Mid American Long Distance; and
 5. Rochester Telecom Systems.
3. Within 60 days of this Order the following companies shall cease charging geographically deaveraged long distance rates within Minnesota and file geographically averaged rates or show good cause why their non-uniform rates are just and reasonable:
 1. Brainerd Telecom Ltd.;
 2. Econocall;
 3. National Teleservice;
 4. Red Wing Long Distance;
 5. Telephone Associates Long Distance;
 6. Advanced Business Telephone; and
 7. North Central Telecom.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)