

P-3007/NA-89-76FOR HEARING

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 Minnesota Independent
Equal Access Corporation's Application for a
Certificate of Public Convenience and
Necessity

ISSUE DATE: June 2, 1989

DOCKET NO. P-3007/NA-89-76

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On February 7, 1989, the Minnesota Independent Equal Access Corporation (MIEAC or the Company) filed a request with the Minnesota Public Utilities Commission (Commission) for a Certificate of Public Convenience and Necessity. MIEAC requested authority to provide centralized equal access services to interexchange carriers (IXCs), including 1+ presubscription, for all intrastate interLATA and intraLATA traffic. An application for authority to provide centralized equal access services for interstate traffic was filed with the Federal Communications Commission (FCC).

The Minnesota Equal Access Network Systems, Inc. (MEANS) is the parent corporation of MIEAC. Other wholly owned subsidiaries of MEANS include the Minnesota Equal Access Facilities Corporation (the facilities company), which would provide facilities to MIEAC, and the Minnesota Independent Interexchange Corporation (MIIC), which would be a competitive toll provider. MIEAC is proposing to provide centralized equal access services on behalf of and in connection with all independent local exchange carriers (ILECs) within Minnesota that choose to participate.

On March 3, 1989, the Minnesota Department of Public Service (DPS or Department) submitted a letter to the Commission requesting that a contested case hearing be conducted in this matter. The DPS stated that the MIEAC filing may significantly alter the telecommunications market in Minnesota.

On March 8, 1989, the Commission issued a notice soliciting comments from interested persons addressing the necessity for a contested case hearing and the effect of MIEAC's filing on the committee established in In the Matter of an Investigation into IntraLATA Toll Access Compensation Plans, Docket No. P-999/CI-87-695 which is conducting a point to point traffic study to evaluate a proposed Optional Carrier Compensation Plan.

MIEAC, the DPS, the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), LDB Corporation, Teleconnect, and AT&T Communications of the Midwest, Inc. (AT&T) submitted comments in support of a contested case proceeding to resolve this matter.

Northwestern Bell Telephone Company (NWB) submitted comments stating that the Commission could resolve this matter without a contested case proceeding if the following conditions were met. First, the Commission should reject that part of MIEAC's request that requires carriers to route terminating traffic via MIEAC's switch and to pay a terminating per minute of use charge. Second, NWB and AT&T should have the option of serving MIEAC participating LEC exchanges and not be required to be the carrier of last resort. Finally, MIEAC should be required to file additional information on the demand for equal access in rural Minnesota, toll rates for MIIC, and any firm commitments from other IXC's that the MIEAC network will be used.

If the matter is set for hearing, NWB recommended that all LECs in the state, MIIC, and the facilities company be made parties to the proceeding and NWB provided a list of twenty-two issues to be addressed.

The Commission met on May 25, 1989 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over this matter pursuant to Minn. Stat. § 237.16, subd. 1 (1988). That statute requires that local service be provided by a single provider unless there has been a specific determination that duplication for local service is in the public interest. MIEAC is proposing to offer switched access services which are a local exchange service. Therefore, this matter is properly before the Commission.

The Commission finds that material issues of fact are in dispute in this filing in determining the public interest, any terms and conditions to be applied to the service, and a reasonable rate for the services.

The Commission concludes that this matter is a contested case within the meaning of Minn. Stat. § 14.02, subd. 3 (1988) and must be referred to the Office of Administrative Hearings under Minn. Stat. § 14.58 (1988).

Issues to be Addressed

A contested case proceeding in this matter, to be manageable and effective, must address issues that are clearly stated at the outset. The Commission asks that as a preliminary matter, the

Administrative Law Judge (ALJ) determine whether the Minnesota Equal Access Network Systems, Inc. (MEANS), as opposed to MIEAC should be the party applicant and whether the Minnesota Independent Interexchange Corporation and the Minnesota Equal Access Facilities Corporation should be made parties to this proceeding.

Further, the Commission directs parties to address the following issues in the hearings:

1. Whether all interexchange carriers, including AT&T and NWB, must use MIEAC facilities to terminate calls;
2. Whether the MEANS application is in the public interest;
3. The terms and conditions by which MEANS may provide centralized equal access service; and
4. What constitutes a reasonable rate to be charged interexchange carriers for the centralized equal access services provided by MEANS?

The Commission does not intend to limit parties' ability to address other relevant issues.

II. Procedural Outline

The evidentiary hearings on the MIEAC's petition will be conducted by an Administrative Law Judge appointed by the Chief Administrative Law Judge of the State of Minnesota and will be held in compliance with the applicable laws relating to the Public Utilities Commission, the contested case provisions of the Administrative Procedure Act (Minn. Stat. Ch. 14); the Rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.5100 - 1400.8400; and the Rules of Practice of the Public Utilities Commission, Minnesota Rules, parts 7830.0100 - 7830.4400, to the extent that they have not been superseded by the Rules of the Office of Administrative Hearings.

These statutes and rules may be purchased from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155, 612/297-3000.

The rules provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross examine witnesses, and rights to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence pursuant to Minnesota Rules, part 1400.7000.

Interested persons or groups may petition to intervene as formal parties in the case to present expert testimony and submit briefs. The Administrative Law Judge will hold evidentiary hearings for the presentation of expert testimony by the Company, the Minnesota Department of Public Service, and other agencies, persons, or groups who have formally intervened. Parties are advised to bring to the hearing all documents, records and witnesses they need to support their position. During the evidentiary hearings, all parties may present evidence and argument regarding the issues and may cross-examine witnesses.

Any person intending to intervene as a formal party to these hearings must submit a petition for Leave to Intervene to the Administrative Law Judge and serve the petition on all existing parties. The petition must state how the Petitioner's legal rights, duties or privileges may be determined or affected by the Commission's decision in the matter and shall set forth the grounds and purposes for which intervention is sought, and shall indicate the Petitioner's statutory right to intervene, if one exists. All parties have the right to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

A Notice of Appearance (ATTACHMENT A) must be filed with the Administrative Law Judge within 20 days of the date of service of this Order if any party intends to appear at the hearing. The Notice of Appearance is not required if the hearing date is less than 20 days from the issuance of this Order.

A prehearing conference shall be held at 10:00 a.m. on June 19, 1989 at the Commission's Large Hearing Room, 715 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101. Potential intervenors shall attend the prehearing conference with information which will facilitate the scheduling of hearings permitting all of the parties to present their evidentiary views in a manner and within a time frame which would be as fair and expeditious as possible.

If persons have good reason for requesting a delay of any hearing, the request must be made in writing to the Administrative Law Judge at least five days prior to the hearing. A copy of the request must be served on the Commission and all parties.

Failure to appear at the hearing may result in facts and issues being resolved against the party who fails to appear.

Parties should take note that any material introduced into evidence may become public data unless a party objects and requests relief under Minn. Stat. Section 14.60, subd. 2 (1986).

Any question concerning informal disposition of this matter pursuant to Minnesota Rules, part 1400.5900 or discovery of information pursuant to Minnesota Rules, parts 1400.6700 and 1400.6800, should be addressed to Margie Hendriksen, Special Assistant Attorney General, 780 American Center Building, St. Paul, Minnesota 55101, 612/296-0410.

All other questions concerning this hearing should be addressed to the Administrative Law Judge assigned:

Bruce Campbell
Office of Administrative Hearings
5th Floor, Flour Exchange Building
310 South 4th Avenue
Minneapolis, Minnesota 55415
612/341-7602

The lobbying provisions of Minn. Stat. Chapter IOA apply to general rate cases. If the document that a person files pertains to ratemaking, rulemaking, certificates of need for large energy facilities or contested case rate proceedings, the person may be required to register with the Minnesota Ethical Practices Board under the lobbying provisions of Minn. Stat. Ch. IOA. Lobbying includes attempting to influence administrative action in rulemaking proceedings, certificate of need cases or contested ratemaking cases. An individual who is engaged for pay or authorized by another individual or association to spend money and who spends more than five hours in any month or more than \$250 in a year to influence administrative action must register with the Board and report disbursements for lobbying purposes, including preparation and distribution of lobbying materials, telephone, postage, media advertising, travel and lodging. The statute provides certain exemptions, including an exception applicable to expert witnesses delivering testimony. Persons are encouraged to telephone the Board at 612/296-1720 for additional information.

ORDER

1. A contested case hearing concerning this matter shall be held commencing with a Prehearing Conference at 10:00 a.m. on June 19, 1989 at the Commission's Large Hearing Room, 715

American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.
Hearing dates will be set by Order of the Administrative Law Judge.

2. All parties shall furnish adequate responses within 10 days to all reasonable information requests from other parties.

3. The Commission authorizes the Executive Secretary of the Minnesota Public Utilities Commission to enter Orders on behalf of the Commission varying time requirements for the filing of pleadings and other documents and determining the conduct of this proceeding before the Commission according to the standards set forth in Minnesota Rules, part 7830.4400. Any party adversely affected by any Order issued by the Executive Secretary varying such filing requirements or regarding other matters may file a motion to reconsider, vacate or modify the Order within ten days after its entry or one day prior to the filing deadline or occurrence of an act directed by the Order. Any motion for reconsideration, vacation or modification shall be heard by the Minnesota Public Utilities Commission.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)

