

P-478/EM-90-163 ORDER APPROVING TWO PRICE LIST CHANGES AND
DISAPPROVING PRICE INCREASES FOR TRAVEL SERVICE AND DIRECTORY
ASSISTANCE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Proposal
by Teleconnect to Make
Several Changes in Its
Minnesota Price List

ISSUE DATE: November 8, 1990

DOCKET NO. P-478/EM-90-163

ORDER APPROVING TWO PRICE LIST
CHANGES AND DISAPPROVING PRICE
INCREASES FOR TRAVEL SERVICE
AND DIRECTORY ASSISTANCE

PROCEDURAL HISTORY

On March 14, 1990, Teleconnect Long Distance Services and Systems Company (Teleconnect) filed a revision of its Minnesota price list with the Department of Public Service (the Department).

On June 15, 1990, the Department filed a report of investigation and recommendation regarding the four changes that Teleconnect sought in its price list.

On June 26, 1990, Teleconnect filed its response to the Department's analysis and recommendations.

On October 23, 1990, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The Commission must decide whether it will approve the price list changes that Teleconnect proposes. The proposed changes would do the following:

1. introduce a new pricing plan titled "Hello Minnesota";
2. amend the current pass-through procedure to provide for the pass-through of certain state and county taxes and fees;
3. increase the price of the initial minute of Travel Service; and
4. increase the price for directory assistance (DA).

Introduction of "Hello Minnesota"

Teleconnect proposes a new pricing schedule for its existing long distance telephone service. Under the new schedule, the current evening discount rate will apply between noon and 1:00 p.m. on Monday through Friday.

Because the underlying service provided by "Hello Minnesota" (toll service) is currently on Teleconnect's price list and is classified by the legislature as subject to emerging competition (Minn. Stat. § 237.59, subd. 1 (11)), Teleconnect's proposal to decrease the rate for this service is governed by Minn. Stat. § 237.60, subd. 2 (a) (1988).

Minn. Stat. § 237.60, subd. 2 (a) (1988) provides that decreases in rates for services that are subject to emerging competition and listed in the price list become effective ten days after filing a new price list, provided that an incremental cost study shows that the proposed price is above incremental cost. The statute authorizes the Commission to prevent the proposed price reduction from going into effect if it finds that the proposed rate is below incremental cost or that the proposed rate is not just and reasonable. Minn. Stat. § 237.60, subd. 2 (a) (1988).

In this case, the Company has provided an incremental cost study that demonstrates that the price continues to exceed incremental cost. In addition, the record does not indicate that the rate is unjust or unreasonable. The Commission finds that the "Hello Minnesota" change to Teleconnect's price list is properly filed in compliance with Minn. Stat. § 237.60, subd. 2 (a) (1988) and therefore became effective pursuant to the statute on March 24, 1990, ten days after the Company filed its new price list.

Amended Price List Language Re: Pass-Through Procedure

Teleconnect's existing price list states that when any municipality imposes taxes upon it, it will bill its customers in that municipality to collect the amount of municipal tax imposed and pass that amount on to the municipality. Teleconnect's amended price list includes similar language which allows it to collect certain state and county taxes from customers as well and pass those taxes on to the relevant taxing authority.

Teleconnect states that the new language will have no immediate effect in Minnesota because property taxes are not on the list of taxes to be collected and passed through and Teleconnect does not pay the gross receipts tax in Minnesota. Nevertheless, the language establishes the potential for changing the amounts that Teleconnect collects from the affected customers. Therefore, the Commission views the amended language as representing a "substantial change" in the application of the price list and, hence, governed by Minn. Stat. § 237.60, subd. 2 (d) (1988).

Pursuant to Minn. Stat. § 237.60, subd. 2 (d) (1988), substantial changes in price list language become effective at the same time as a price decrease under Minn. Stat. § 237.60, subd. 2 (b) (1988), i.e. ten days after filing. In this case, the amended language was filed on March 14, 1990. The effective date, therefore, was ten days later, March 24, 1990.

Travel Service

Teleconnect's Travel Service enables its pre-subscribed customers to originate intrastate toll calls from anywhere in Minnesota. The customer dials an 800 number, reaching a Teleconnect operator. The customer then provides the operator with the customer's authorization code as well as the phone number to be called. The operator then proceeds to dial the provided number to complete the toll call.

A. Classification of Travel Service

Teleconnect argues that Travel Service is an "integral part" of its message toll service, which is classified as an emergingly competitive service by Minn. Stat. § 237.59, subd. 1 (11) (1988). Under the "integral part" rubric, Teleconnect argues that an increase in the rates for Travel Service should be treated as a rate increase for message toll service, i.e. governed by Minn. Stat. § 237.60, subd. 2 (a). Under this statute, absent a Commission finding that the proposed increase in Travel Service's rate is unjust and unreasonable or a finding that the proposed rates are below incremental costs, the increase becomes effective ten days after filing the new price list and incremental cost study.

Teleconnect argues, in essence, that when the legislature listed "inter-LATA and intra-LATA message toll service" among the services it classified as subject to emerging competition, it intended the phrase to include auxiliary features to that toll service, such as the operator-handled portion of Travel Service. The Commission does not share this expansive view of the statute. In Minn. Stat. § 237.59, subd. 1 the legislature provided a definitive rather than exemplary list of 23 services it classified as subject to emerging competition and established strict standards and procedures for classifying any additional services as subject to emerging competition. Minn. Stat. § 237.59, subs. 2-7 (1988). The legislature specifically classified one operator-handled service ("operator-handled intercept services") as subject to emerging competition. Minn. Stat. § 237.59, subd. 1 (15) (1988). In so doing, the legislature indicated that operator-handled services were separate from message toll service and were not merely an "element" of message toll service. Minn. Stat. § 237.59, subd. 1 (15). Moreover, in designating one specific operator-handled service as subject to emerging competition, the legislature strongly indicated an intention to exclude other operator-handled services from statutory classification as "subject to emerging

competition." Viewing the statute as a whole, the legislature's failure to list the operator-handled aspect of Travel Service specifically or generically as subject to emerging competition is dispositive. The operator-handled aspect of Travel Service is not classified by statute as subject to emerging competition.

B. Price Increase in Travel Service

Next, the question arises how the Commission will treat an offering such as Travel Service which is a bundled offering composed of a service that is subject to emerging competition (message toll service) and a service that is not subject to emerging competition (an operator-handled service). In light of the restrictive nature of Minn. Stat. § 237.59, subd.1 (1988), the Commission will not treat bundled offerings that contain a service that is not subject to emerging competition as if the entire bundle were subject to emerging competition, as Teleconnect urges. The Commission will view such mixed bundles as noncompetitive services and will evaluate them accordingly. To rule otherwise would invite telephone companies to avoid the classification standards and process established by the legislature (Minn. Stat. § 237.59, subds. 2-6) through creative bundling.

Viewed as a proposal to increase the rates for a noncompetitive service, Teleconnect's filing is deficient and will be disapproved. To seek approval of a price increase for a noncompetitive service outside a rate case, Teleconnect must file pursuant to Minn. Stat. § 237.63, subd. 3 (1988), Minn. Stat. § 237.63, subd. 4(c) (1988) or Minn. Stat. § 237.075 (1988). Teleconnect's filing fails to meet the requirements of each of these statutes.

Directory Assistance (DA) Service

A. Classification of Directory Assistance Service

Teleconnect characterizes its directory assistance (DA) service as an "integral element" of its message toll service which is classified as emergingly competitive under Minn. Stat. § 237.59, subd. 1 (11). As with the previously discussed Travel Service, Teleconnect invokes the "integral element" rubric to bring the rate for DA under the umbrella of its emergingly competitive message toll service. Teleconnect argues, therefore, that the rate increase it proposes for its DA service should receive abbreviated review as an emergingly competitive service under Minn. Stat. § 237.60, subd. 2 (b) (1988).

In light of the nature of Minn. Stat. § 237.59, subd.1 (1988) as analyzed previously in this Order, the Commission does not agree to adopt Teleconnect's expansive reading of the statute. Directory assistance was a commonly known and widely used service at the time the legislature adopted this statute. In failing to list it among the 23 services that it classified as subject to

emerging competition, the legislature must be understood as intending its exclusion from the list rather than as intending that it should be "understood" to be classified as subject to emerging competition as an unstated part of "message toll service." There is nothing in the statute to suggest that the legislature intended its listed classifications to be expanded to include services that are auxiliary or merely related to the listed services. Based on this analysis, the Commission finds that DA is not subject to emerging competition.

B. Rate Increase for DA Service

Since DA is a non-competitive service, the filing in support of an increase in its rates must be filed pursuant to Minn. Stat. § 237.63, subd. 3 (1988), Minn. Stat. § 237.63, subd. 4(c) (1988) or Minn. Stat. § 237.075 (1988). Teleconnect's filing is deficient for failure to meet the requirements of those statutes. Its request to increase its DA rates will be disapproved.

ORDER

1. Teleconnect's new pricing schedule for its existing long distance telephone service, titled "Hello Minnesota", is approved, effective March 24, 1990.
2. Teleconnect's proposal to add certain State of Minnesota and Minnesota county taxes to a list of taxes and fees that it passes through to its customers is approved, effective March 24, 1990.
3. Teleconnect's Travel Service is determined to be a noncompetitive service and the price increase proposed for that service is disapproved.
4. Teleconnect's Directory Assistance Service is determined to be a non-competitive service and the price increase proposed for that service is disapproved.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)