

P-3007/NA-89-76 AFFIRMING ADMINISTRATIVE LAW JUDGE'S RULINGS ON CERTIFIED
MOTIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

ISSUE DATE: FEBRUARY 12, 1990

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

ORDER AFFIRMING ADMINISTRATIVE
LAW JUDGE'S RULINGS ON CERTIFIED
MOTIONS

PROCEDURAL HISTORY

On February 7, 1989 the Minnesota Independent Equal Access Corporation (MIEAC) filed an application for a certificate of authority to provide centralized equal access services to interexchange carriers on behalf of any independent local exchange carrier which chose to use its services. On June 2, 1989 the Commission issued its NOTICE AND ORDER FOR HEARING, referring the application to the Office of Administrative Hearings for contested case proceedings.

On January 17, 1990 the Administrative Law Judge hearing the case certified to the Commission his decisions on two motions brought by Northwestern Bell Telephone Company (Northwestern Bell). One motion sought to strike portions of testimony offered by the Department of Public Service (the Department) regarding the provision of equal access in Northwestern Bell exchanges. The other sought clarification that the scope of the proceeding did not include the provision of equal access in Bell exchanges. In the alternative, the company requested a continuance to allow it to develop evidence regarding the provision of equal access in its own exchanges.

The Administrative Law Judge granted both motions. In ruling on the motion for clarification the Administrative Law Judge (ALJ) also found the issue of whether independent local exchange carriers should be required to participate in centralized equal access to be outside the scope of this proceeding.

MIEAC, AT&T Communications of the Midwest, Inc., and Northwestern Bell supported the ALJ's rulings. United Telephone System-Midwest Group did not take a position on the motion to exclude testimony, but supported the ALJ's ruling on the scope of the proceeding.

The Department and the Residential Utilities Division of the Office of the Attorney General (RUD-

OAG) argued that this proceeding should be generic in scope and should include consideration of both issues excluded by the Administrative Law Judge: the provision of equal access to Northwestern Bell exchanges and whether all local exchange companies should be required to participate in any equal access plan which might emerge from the proceeding. These parties also urged reinstatement of the stricken testimony.

The matter came before the Commission on January 31, 1990.

FINDINGS AND CONCLUSIONS

The Commission agrees with the Administrative Law Judge that this proceeding should focus on MIEAC's application and should not attempt to resolve far-reaching policy issues regarding the provision of equal access in Minnesota. This was the Commission's original intention and is still the most workable and equitable approach.

MIEAC has developed and filed a specific proposal for providing equal access which deserves to be judged on its own merits. Expanding the proceeding as the Department and the RUD-OAG request would cause serious delay in acting on this application, which has already been pending for twelve months. The Commission agrees with the Administrative Law Judge that expanding the scope of the proceeding would require recessing the evidentiary hearings to make all independent local exchange carriers parties and to allow Northwestern Bell to file testimony on its plans to provide equal access to its own exchanges.

The Department and the RUD-OAG suggest that all independent local exchange carriers need not be made parties, as long as they are given a subsequent opportunity, through a show-cause proceeding or similar procedural vehicle, to challenge the application of the general conclusions reached in this case. Even if such a procedure met minimal due process requirements, which is unclear, the Commission would decline to use it here. The policy considerations and practical effects of mandating equal access, either generally or by a specific means, are too important for that decision to be made without maximum participation by all affected parties. Therefore, if the Commission believed the scope of the proceeding should be expanded, recessing the proceedings would be necessary.

Finally, the Commission would not hesitate to expand the scope of this proceeding, regardless of the delay that would entail, if the public interest required it. The Commission believes, however, that it can determine the public interest regarding MIEAC's application without deciding at the same time whether all independent local exchange carriers should use MIEAC's or other equal access services and without deciding whether and how Northwestern Bell should be required to provide equal access in its exchanges.

It is true that these issues are related and that decisions on some of them will affect others. It is always difficult in such cases to determine in advance whether it will be more productive to use a broad-based, generic approach or an incremental, particularistic one. The Commission believes,

however, that it can act on the MIEAC application, on its own merits, without sacrificing its ability to address equal access issues more comprehensively in other contexts. For example, generic equal access issues continue to be addressed in the two study groups examining the implementation of intraLATA equal access and alternatives to the designated carrier plan.¹ The Commission does not therefore believe that denying the request to expand the scope of the MIEAC proceeding forecloses its opportunity to take a broad view of the issues surrounding equal access.

ORDER

1. The Administrative Law Judge's determinations on the motions certified to the Commission are hereby affirmed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

(S E A L)

¹ These study groups were created in docket number P-999/CI-85-582 and operating under docket numbers P-999/CI-87-697 and P-999/CI-87-695, respectively.