

P-999/CI-88-917 GRANTING RECONSIDERATION, VACATING COMMISSION ORDER,
AND REMANDING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS FOR
FURTHER PROCEEDINGS

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 Applications for
Authority to Provide Alternative Operator
Services in Minnesota

ISSUE DATE: April 16, 1990

DOCKET NO. P-999/CI-88-917

O R D E R G R A N T I N G
RECONSIDERATION, VACATING
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PROCEDURAL HISTORY

On December 16, 1988, the Minnesota Public Utilities Commission (the Commission) directed the Office of Administrative Hearings to conduct a contested case hearing in this matter. On April 10, 1989, the parties to this proceeding filed a Stipulation of Settlement (Stipulation) with the Administrative Law Judge (ALJ). As a result, evidentiary hearings before the ALJ were cancelled and the contested case proceeding was suspended. On June 9, 1989, the ALJ filed his Findings of Fact, Conclusions of Law, Recommendation and Memorandum with the Commission.

On September 7, 1989, the Commission met to consider the ALJ's Report and the Stipulation. At that meeting the Commission decided that it needed more information to fully analyze this matter before making its decision.

On September 28, 1989, the Commission sent a list of thirteen questions to each of the parties and asked for their responses. The parties filed separate responses to the Commission's questions. On November 20, 1989, the Commission met again to further consider the Stipulation and the parties' additional comments.

On January 12, 1990, the Commission issued its ORDER MODIFYING PROPOSED STIPULATION OF SETTLEMENT AND ADOPTING STIPULATION OF SETTLEMENT AS MODIFIED. In that Order, the Commission concluded that the provision of Alternative Operator Services would be in the public interest only when provided in the manner prescribed in the Stipulation as modified by the Commission.

On January 22, 1990, Teleconnect Long Distance Services and Systems Company (Teleconnect) and Operator Assistance Network (OAN) filed separate Petitions for Reconsideration of the January 12, 1990 Order. On January 23, 1990, International Telecharge, Inc. (ITI) filed a Petition for Reconsideration. On the same date, National Telephone Services (NTS) filed a Petition for Limited Reconsideration or Alternatively, Petition for a Waiver. On January 31, 1990, the Department of Public Service (DPS) filed a Motion for Clarification of the January 12, 1990 Order.

The Commission met on March 21, 1990 to consider the petitions for reconsideration.

FINDINGS AND CONCLUSIONS

The Commission began this proceeding to decide whether the offering of alternative operator services is in the public interest and should be allowed in Minnesota and, if so, whether alternative operator services could or should be classified as emergingly competitive for purposes of regulation. The parties entered into a Stipulation that provided that AOS services offered under certain conditions would serve the public interest. The parties were unable to reach agreement on whether the service was emergingly competitive and how it should be regulated.

In its January 12, 1990 Order the Commission found that the record in this case did not contain substantial evidence that the offering of AOS in Minnesota would be in the public interest without several modifications to the parties' Stipulation. They are: that initial AOS rates may not exceed the rates charged by AT&T on January 12, 1990 for similar services; that in addition to the posted notice requirements of the Stipulation, the notice must include the AOS provider's rates and the percentage or actual dollar amount of the commissions paid to the owner of the host facility by the AOS provider; and, that by March 30, 1990, all AOS bills must include the AOS provider's name.

The Commission decided that consumers could be adequately protected only if AOS were provided under conditions described in the Stipulation and modified by the Commission. The Commission agreed with the parties that it was unnecessary to determine whether AOS is subject to emerging competition at this time as long as consumers were afforded the same type of protection offered by a competitive market place.

The Commission must rule on filings from Teleconnect, OAN, ITI, and NTS asking for reconsideration or limited reconsideration of the Commission's January 12, 1990 Order.

At its March 21, 1990 meeting, the Commission on its own motion reconsidered its January 12, 1990 Order in its entirety. In their pleadings and during the Commission's March 21, 1990 meeting, several of the parties argued that the modifications made to the Stipulation by the Commission were burdensome, inequitable, expensive, and technically infeasible.

The parties' requests for reconsideration would lessen the oversight of AOS contemplated by the Commission's January 12, 1990 Order. For the reasons stated in that Order, the Commission does not agree with the parties that the modifications to the Stipulation made by the Commission are unnecessary. The parties have convinced the Commission that it does not have enough information to decide whether AOS is in the public interest at all.

The Commission recognizes the intent of the parties to be bound by the Stipulation and any modifications made to it by the Commission only if those modifications are acceptable to all parties.

The Commission notes that the parties' Stipulation provides at p. 12 and 13:

If the Commission rejects this Stipulation or if the Commission modifies this Stipulation and any Party exercises its right to void the Stipulation within the prescribed time, the Parties retain all their rights to file relevant motions, to have an evidentiary hearing, to present briefs to the ALJ, to file exceptions to the ALJ's recommendations, to have oral argument before the Commission, to seek rehearing, reconsideration, clarification, or alteration of the Commission's order, to appeal that order, and to take whatever actions would have been permissible had there been no settlement.

Finally, all Parties agree that, unless this Stipulation is approved by the Commission, this Stipulation shall be privileged and shall not be admissible in evidence or in any way described or discussed in any proceeding.

In its Petition for Rehearing or Reconsideration, ITI specifically stated:

[I]f the Commission does not reconsider its adoption of the modified Stipulation, ITI and other operator service providers will have no choice but to withdraw their consent to the Stipulation, for the reasons explained below.

The parties have made it clear that the Commission's modifications are unacceptable to them. The Commission notes ITI's unambiguous statement that failure to reconsider its adoption of the modified Stipulation will result in ITI's withdrawal of its consent to the Stipulation.

The Commission believes that it is unnecessary to require parties to formally rescind their Stipulation. To do so would only unnecessarily prolong an already lengthy and time consuming process.

The Commission will reaffirm its decision to reject the Stipulation as proposed and will vacate its Order of January 12, 1990 and remand this matter to the ALJ for a full development of the issue of whether AOS is in the public interest and, if so, how it should be regulated. Further proceedings

will be scheduled by the ALJ assigned to this matter.

In its December 16, 1988 ORDER ACCEPTING WITHDRAWAL OF PETITION, CONSOLIDATING DOCKETS AND NOTICE AND ORDER FOR HEARING in this matter, the Commission found at p. 4 that:

[W]hether to grant or deny the requests of the companies for authority to provide operator assisted long distance services in Minnesota is a question which requires a determination of the public convenience and necessity. To decide that question, however the Commission must decide whether AOS is a noncompetitive service and, therefore, subject to the public convenience and necessity standards of Minn. Stat. § 237.16 (1986) or whether it is classified as a competitive service under Minn. Stat. § 237.59 (Supp. 1987).

The Commission cited Minn. Stat. § 237.59, subd. 5 which lists factors to consider in determining whether a service is subject to either effective competition or emerging competition. The Commission directs parties to address those factors in the remanded proceedings. Further, Minn. Stat. § 237.59, subd. 6 provides that the person seeking to have a service classified as subject to effective or emerging competition has the burden of proving that competition exists and that classifying the service as other than noncompetitive will serve the public interest.

Also, the Commission directed parties to address eight issues relating to whether rate regulation of AOS providers is necessary to protect the interest of consumers and whether the benefits of rate regulation outweigh the burdens of rate regulation. The Commission will again direct parties to address these issues.

In addition, the Commission would like parties to address:

1. the effect that commissions paid to host facilities by AOS providers have on rates;
2. the legality of such commissions; and
3. the technical feasibility of blocking intrastate AOS calls, if the Commission were to find that AOS does not serve the public interest in Minnesota.

ORDER

1. The Commission hereby reconsiders its January 12, 1990 Order in this matter.
2. The Commission hereby vacates its January 12, 1990 Order in this case and remands the matter to the Office of Administrative Hearings for further proceedings consistent with this Order.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Lee Larson
Acting Executive Secretary

(S E A L)