

P-421/M-89-254 DENYING RECONSIDERATION AND ESTABLISHING NEW TIME FRAMES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Northwestern Bell Telephone
Company's Proposal to Change its Rates for
Customer-Owned Pay Telephones

ISSUE DATE: May 17, 1990

DOCKET NO. P-421/M-89-254

ORDER DENYING RECONSIDERATION
AND ESTABLISHING NEW TIME
FRAMES

PROCEDURAL HISTORY

On April 18, 1989, Northwestern Bell Telephone Company (Northwestern Bell or the Company) filed a proposal to change its local exchange rates for customer-owned pay telephones. On April 12, 1990, the Commission issued its ORDER ACCEPTING FILING UNDER MINN. STAT. § 237.075, SUSPENDING PROPOSED RATES, AND INITIATING AN INVESTIGATION INTO REASONABLENESS OF PROPOSED RATES. In that Order the Commission accepted the filing under Minn. Stat. § 237.075 (1988), suspended the proposed rates, and directed the Company to provide additional cost and revenue information. It also established time frames for a report by the Department of Public Service and for comments by interested parties.

On April 23, 1990, the Department of Public Service (the Department) filed a petition for reconsideration of the April 12 Order. The Department argued that the Commission lacked the statutory authority to consider the proposed rate change outside of a general rate case, that the Company's filing should be dismissed for failure to comply with the requirements of Minn. Stat. § 237.075 (1988), and that the proposed rate change should be rejected on the merits.

Northwestern Bell filed comments supporting the original decision and opposing reconsideration.

The matter came before the Commission on May 8, 1990.

FINDINGS AND CONCLUSIONS

The Commission's Statutory Authority to Consider the Filing

The Department argues that the Commission must disapprove the proposed rate change because it does not fall within the parameters of Minn. Stat. § 237.63 (Supp. 1989). That statute establishes procedures for expedited processing of specific types of miscellaneous tariff filings. The Department contends that that statute is the only statutory authority for changing rates for noncompetitive services outside of a general rate case. The Commission disagrees.

First of all, the statute itself proceeds on the assumption that it does not set forth the only means by which miscellaneous rate changes can be made. It begins as follows: "A telephone company whose general revenue requirement is determined under section 237.075 may also set or change its rates for noncompetitive services under this section." Minn. Stat. § 237.63, subd. 1 (Supp. 1989), emphasis added. This language indicates that the legislature recognized there were existing procedures for examining miscellaneous rate change filings¹, and that its goal was not to displace these procedures, but to supplement them.

Furthermore, instead of limiting permissible miscellaneous rate changes to those listed, the statute goes on to provide as follows:

Other changes. A tariff change not covered by subdivisions 1 to 4b and not requiring a review of a telephone company's gross revenues must be reviewed in accordance with section 237.075, subdivisions 1 and 2, except that the commission may order the company to provide whatever notice to potentially affected customers that the commission considers appropriate.

Minn. Stat. § 237.63, subd. 4c (Supp. 1989).

Here the statute clearly recognizes that miscellaneous rate changes may be considered under Minn. Stat. § 237.075 as well as under Minn. Stat. § 237.63.

Finally, the statute ends with the provision that rates set in accordance with its procedures may be changed under section 237.075, and that rates proposed in accordance with its procedures may be suspended (ordered not to take effect) and evaluated under section 237.075:

¹ Examining miscellaneous rate change filings under Minn. Stat. § 237.075 is a Commission practice of long standing.

Commission review. Nothing in this section prevents the commission from ordering that a requested change not take effect, or from subsequently amending the rates either through a complaint proceeding, a commission investigation, or through a proceeding conducted under section 237.075.

Minn. Stat. § 237.63, subd. 7 (1988).

The statute at issue clearly treats section 237.075 as another procedural vehicle for evaluating miscellaneous rate change filings. The Commission therefore rejects the Department's contention that miscellaneous rate changes can be permitted only if they fit into one of the substantive categories listed in section 237.63.

The Policy Implications of Considering the Filing

The Department's comments dwell at length on the danger of miscellaneous tariff filings supplanting the general rate case as the primary means of adjusting a company's rates, revenues, or rate design. The Commission shares the Department's view that the general rate case is the appropriate vehicle for any far-reaching adjustment in any of these areas.

The Commission continues to believe, however, for the reasons set forth in the April 12 Order, that the rate change at issue can be appropriately addressed in a miscellaneous tariff proceeding. The Commission will continue to scrutinize the revenue and rate design implications of each miscellaneous tariff filing to ensure that matters requiring the full evidentiary development and adversary procedures of a general rate case are decided in that setting.

The Filing's Compliance with the Formal Requirements of Section 237.075

The Department urges the Commission to reject the Company's proposal because its filing did not comply with all the formal requirements of Minn. Stat. § 237.075 (1988). The Commission's Order of April 12, which noted the non-compliance, required the Company to consult with the Department and comply with all statutory requirements within 30 days.

When a filing is inadequate, it is within the Commission's discretion to reject it or to allow additional time for compliance. In this case non-compliance was inadvertent and remediable, and the Company agreed to waive the ten month deadline for Commission action under Minn. Stat. § 237.075, subd. 2 (1988). Since any dismissal of the filing would have been without prejudice, the primary results of dismissal would

have been delay and duplication of effort. The Commission concludes granting the Company additional time was proper under the circumstances of this case.

The Merits of the Filing

The Department also urges the Commission to reject the filing on the merits, on grounds that the Company's customer-owned pay telephone rates are comparable to those of other carriers and do not require adjustment. The Commission finds that this and related issues can more properly be addressed when the merits of the proposal come before the Commission.

Time Frames Adjusted

The April 12 Order established time frames for the Company to submit further cost information, for the Department to submit its report, and for interested parties to comment on both filings. These time frames will be adjusted to begin from the date of this Order, instead of from the issuance of the Order of April 12.

ORDER

1. The petition for reconsideration filed by the Department of Public Service is denied.
2. The Company shall consult with the Department regarding the cost information it needs to complete its examination of the reasonableness of the proposed customer-owned pay telephone rates and shall provide such information within 30 days of the date of this Order.
3. Within 45 days of the date of this Order, the Department shall submit its report on the reasonableness of the proposed customer-owned pay telephone rates.
4. Within 10 days of the filing of the Department's report, any party wishing to file comments on the report or to file further comments on the Company's proposed rate change shall do so.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)