

P-3007/NA-89-76 ORDER GRANTING CERTIFICATE OF AUTHORITY TO  
PROVIDE EQUAL ACCESS SERVICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

ISSUE DATE: January 10, 1991

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

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AUTHORITY TO PROVIDE EQUAL  
ACCESS SERVICE

**PROCEDURAL HISTORY**

**I. PROCEEDINGS TO DATE**

On February 7, 1989, the Minnesota Independent Equal Access Corporation (MIEAC) filed an application for a certificate of authority to provide centralized equal access (CEA) services to interexchange carriers (IXCs) on behalf of any independent local exchange carrier (ILEC) which chose to use its services.

On June 2, 1989, the Commission issued its NOTICE AND ORDER FOR HEARING, referring MIEAC's application to the Office of Administrative Hearings for contested case proceedings.

On August 22, 1990, the Administrative Law Judge (ALJ) assigned to the MIEAC case issued his Findings of Fact, Conclusions of Law and Recommendations.

By September 15, 1990, the following parties had filed exceptions to the ALJ's Report: MIEAC, U S WEST Communications (USWC), the Minnesota Department of Public Service (the Department), the Office of the Attorney General - Residential Utilities Division (OAG-RUD), AT&T Communications of the Midwest, Inc. (AT&T), and MCI Telecommunications Corporation (MCI).

By September 24, 1990, the same parties and Teleconnect Long Distance Services and Systems Company (Teleconnect) filed replies to the exceptions.

On October 31 and November 1, 1990, the Commission heard oral argument from the parties and on November 2, 1990 met to consider this matter.

## FINDINGS AND CONCLUSIONS

The ultimate questions for the Commission in this proceeding have been 1) whether it will grant MIEAC a certificate of authority to provide certain telecommunications services in Minnesota and 2) if so, what conditions, if any, it will place upon that certificate. The Commission has decided to grant MIEAC a certificate of authority subject to certain conditions set forth in this Order. The Commission's rationale in granting such a certificate is the subject of this Order.

### II. EQUAL ACCESS GENERALLY

#### A. Equal Access: A Prerequisite to Competition

Federal and state regulatory authorities have determined that competition between interexchange carriers (IXCs) for end user traffic will benefit end users. Such competition can only result, however, when end-users have a choice of IXCs to carry their toll traffic. Due to the technology of their end offices, local exchange companies (LECs) have historically restricted access to only one IXC, AT&T for interLATA traffic and USWC for intraLATA traffic.

To promote competition between interexchange carriers, federal policy makers have undertaken to loosen the monopoly grip of the dominant IXC over the provision of interLATA long distance services. For example, in United States v. American Telephone and Telegraph Co., 552 F.Supp. 131 (D.D.C. 1982), aff'd sub. nom, Maryland v. United States, 460 U.S. 100 (1983), the Bell Operating Companies (BOCs) were required to make available to competing IXCs access arrangements to the local network equal in kind and quality to those available to AT&T for interLATA toll. These new access arrangements taken together constitute a service system known as "equal access".<sup>1</sup>

Realizing that monopoly access arrangements were tied to end office technology, the court imposed specific time schedules for BOCs to modify their end-office equipment to provide IXCs with interLATA equal access to the BOCs' customers.

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<sup>1</sup> From the customer's viewpoint, an "equal access" service system gives him "equal access" to the available IXCs and enables him to choose between competing IXCs by presubscription or choice of who their 1+ carrier will be. An equal access system makes end users and IXCs accessible to each other the same way end users and the dominant toll carrier (AT&T) were accessible to each other.

Since they were not involved in the divestiture of AT&T, no similar obligation applies to independent local exchange companies (ILECs) by virtue of the Modified Final Judgment. Moreover, the Federal Communications Commission (FCC) has specifically rejected the imposition of fixed timetables for ILECs to provide equal access. Under federal policy, ILECs are only required to provide equal access to competing interexchange carriers within a three year period after receiving a bona fide request from an IXC for such service from computer-controlled end-offices.<sup>2</sup> ILECs having the older electro-mechanical end-offices are under no fixed-term obligation to provide equal access service.

#### **B. Current Status of Equal Access in Minnesota ILEC Exchanges**

State policy makers have also supported the development of competition in the intrastate market. In 1985, the Commission authorized competition for intrastate interLATA and intraLATA toll traffic. In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate Intercity Telecommunications Services Within the State of Minnesota, Docket No. P-442, P-443, P-444, P-421, P-433/NA-84-212, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (October 15, 1985). In 1987, the Minnesota legislature classified interLATA and intraLATA toll service as emerging competitive. Minn. Stat. § 237.57, subd. 1 (11) (1988).

However, to-date most Minnesota ILECs, which serve mostly rural areas, do not provide interLATA equal access service and none provide intraLATA equal access service, services which are necessary to enable IXCs to effectively compete for ILEC toll traffic. For their part, IXCs have made very few bona fide requests for equal access which would require the provision of equal access service within three years.

As a result, most ILEC subscribers have no choice of their interLATA or intraLATA IXCs. Except for alternative access code arrangements available to some ILEC subscribers, AT&T and USWC are the sole IXCs that are available on a 1+ basis in ILEC exchanges.<sup>3</sup>

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<sup>2</sup> A LEC that converts its end-office must defray the cost of that conversion. LECs either absorb or pass on the cost of end-office conversion in their access charges to IXCs.

<sup>3</sup> AT&T serves as the interLATA toll carrier and USWC serves as the intraLATA toll carrier.



### III. MIEAC'S EQUAL ACCESS PROPOSAL

A local exchange company can provide equal access service to its end users in three ways. First, it can install appropriate software in its computer-controlled end-office. This method is referred to as "end-office conversion". Second, it can place an adjunct unit between its unconverted end-office and the access tandem. Third, it can connect unconverted end-office switches with an access tandem equipped with equal access capability.

MIEAC proposes to provide equal access service on behalf of and in conjunction with ILECs in the third way, i.e. by connecting unconverted end-office switches with MIEAC's access tandem equipped with equal access capability.<sup>4</sup> Under MIEAC's proposal, ILECs will be able to provide equal access service without undergoing end-office conversion. ILECs whose end-offices contain the older electro-mechanical switches need not replace them with upgraded computer-controlled (i.e. digital) equipment. The ability to bypass end-office conversion and avoid upgrading to digital equipment is a short cut to the provision of equal access which may have longer term negative consequences for ILEC customers, as shall be addressed more fully later.

MIEAC's method of providing equal access is called centralized equal access (CEA) because it shifts the location of the equal access capability from the end-office (where it exists in a converted end-office) to a central tandem switch which aggregates calls from many different end offices.

MIEAC's centralized equal access system would consist of a network of facilities some of which are owned or operated by MIEAC and some of which are owned by participating ILECs (PILECs) or participating IXCs. Network facilities that MIEAC would own or operate consist of ten toll transfer points (TTPs), one each in Grand Forks, Fargo, Wadena, Brainard, Duluth, St. Cloud, Windom, Owatonna, Rochester and Minneapolis, and one centralized access tandem in the Minneapolis area. The TTPs would be connected by fiber facilities to MIEAC's centralized access tandem. MIEAC proposes to utilize these facilities in conjunction with PILECs and participating IXCs to provide equal

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<sup>4</sup> Sometimes "equal access capability" is referred to as the equal access "intelligence". The intelligence required for the equal access process is the ability to interpret the signals transmitted to it from the end user's telephone, understand what IXC that customer has presubscribed to, and direct that call to the proper preselected carrier. In MIEAC's proposal, the requisite equal access intelligence or capability is provided by LEAS software, used in conjunction with an NTI DMS 200 switch at a centralized tandem located in Minneapolis.

access as follows:

#### **A. Originating Toll Traffic**

ILECs that are participating in the MIEAC system (PILECs) will transport long distance calls that **originate** in PILEC exchanges to the USWC access tandem using existing local transport facilities. At the access tandem, the local transport facilities that carried the call to the access tandem will be cross-connected to MIEAC's TTP. MIEAC would then use its transmission facilities to transport the PILEC customer's long distance call from the TTP to MIEAC's centralized access tandem located somewhere in the Minneapolis area. This centralized access tandem would contain the equal access capability or intelligence. At its central tandem in Minneapolis, MIEAC would switch the call, routing it to the IXC selected by the end user. The IXC may choose to pick up the call at MIEAC's centralized access tandem in Minneapolis or back at the TTP where the call entered MIEAC's facilities.

#### **B. Terminating Toll Traffic**

Where MIEAC provides its optional terminating CEA service, a long distance call that will **terminate** in a PILEC exchange would be transported by the IXC to MIEAC's TTP or the tandem in Minneapolis. For traffic returned to a TTP, MIEAC would transport the call to its centralized access tandem in Minneapolis for switching and recording. The call would then be returned to the TTP for delivery to the PILEC's end office over existing local transport facilities for termination to the called party.

#### **C. Comparison of MIEAC's System With Existing System**

As indicated earlier, with very few exceptions, ILECs do not currently provide equal access between IXCs and ILEC customers, either through converting their end-offices or through contracting with another party provider. Currently, USWC provides access service between ILECs and the monopoly toll carriers: AT&T for interLATA toll calls and USWC for intraLATA toll calls.

ILECs carry toll calls originated by their end users to an intersection (meet point). At this intersection, USWC local transport facilities pick up these calls and carry them to the USWC tandem. At its tandem, USWC connects the toll call originated in an ILEC exchange with the IXC appropriate for that call: USWC for intraLATA toll calls and AT&T for interLATA toll calls. This combination of operations (local transport and switching) is called switched access service.

In sum, then, MIEAC is requesting authority to provide a system of services that, taken as a whole, promises to go beyond the current access arrangements by providing PILECs with equal access capability. One of the services that is part of the MIEAC system (switching) is currently provided to the ILEC by USWC. In providing switching as part of its system, therefore, MIEAC would compete with USWC for the provision of that service and duplicate a portion of the local access network currently owned and operated by USWC. ILECs participating in MIEAC's system (PILECs) would stop using USWC's switching service and by-pass facilities (USWC's access tandems) that USWC currently uses to provide access service to the PILECs.

#### **IV. JURISDICTION**

The Commission has jurisdiction over the provision of telephone service by telephone companies doing business in Minnesota. Minn. Stat. § 237.02 (1988). MIEAC is a telephone company within the meaning of Minn. Stat. § 237.02 (1988) because it proposes to provide telephone services to the public. See Minn. Stat. § 237.01 (1988). Accordingly, the Commission has general jurisdiction over MIEAC. In addition, the Commission has specific jurisdiction to grant or deny MIEAC's application for authority to provide telephone services in Minnesota pursuant to Minn. Stat. § 237.16, subd. 4 (1988).

#### **V. THE APPLICABLE LEGAL STANDARD**

According to USWC, MIEAC is proposing to replace USWC's monopoly provision of switched access service with its own monopoly service. This will amount, according to USWC, to a revocation of USWC's own authority to provide this service. Therefore, USWC argues, MIEAC's application must be judged by the standard enunciated in Minn. Stat. § 237.16, subd. 5, i.e. MIEAC must show that USWC has failed to furnish reasonably adequate telephone service to the ILECs.

The subdivision cited by USWC states:

Any certificate of territorial authority may, after notice of hearing and a hearing, be revoked by the commission, in whole or in part, for the failure of the holder thereof to furnish reasonably adequate telephone service within the area or areas determined and defined in such certificate of territorial authority. (Emphasis added.)

Minn. Stat. § 237.16, subd.5 (1988)

The Commission does not agree that Subdivision 5 applies to the

MIEAC application. Subdivision 5 applies to the revocation of a telephone company's certificate of territorial authority to provide local telephone services. USWC, however, does not have a certificate of territorial authority to provide switched access service (local transport and switching) in any exchange where MIEAC seeks authority to provide it. USWC holds certificates of territorial authority, but only for its own exchanges, not for the ILEC exchanges that are relevant to MIEAC's proposal and system.

The only certificates of territorial authority involved in this case are held by ILECs. ILECs alone have certificates of territorial authority to provide local telephone service within their service boundaries. Pursuant to that authority, they have the right to determine whether they will provide switched access service themselves or whether they will provide it by using an authorized provider of that service. MIEAC does not require a certificate of territorial authority to offer its CEA system to ILECs. MIEAC does not propose to revoke any certificates of territorial authority that USWC holds for its exchanges nor does MIEAC propose to revoke the PILECs' certificates of territorial authority.

Minn. Stat. § 237.16, subd. 1 (1988) governs any proposed provision of local service to end users in an exchange that already has a telephone company operating pursuant to a certificate of territorial authority. It states in relevant part:

....No lines or equipment shall be constructed or installed for the purpose of furnishing local telephone service to the inhabitants or telephone users in any locality in this state, where there is then in operation in the locality or territory affected thereby another telephone company already furnishing such service, without first securing from the commission a declaration, after a public hearing, that public convenience requires such proposed telephone lines or equipment;....

Minn. Stat. § 237.16, subd. 1 (1988).

Subdivision 1 prohibits a company from providing local telephone services to end users in a territory already served by a telephone company until the Commission finds that the public convenience requires such competition. The Commission applied this subdivision, therefore, in the Metro Fiber Case in which Metropolitan Fiber Systems of Minneapolis-St. Paul, Inc. sought authority to provide certain local telephone services in Metro Area exchanges for which NWB had a certificate of territorial authority, thereby competing with NWB to provide these services to end users. In the Matter of the Filing by Metro Fiber Systems

to Provide Certain Telecommunications Services Within Minneapolis and St. Paul, Minnesota, Docket No. P-495/EM-89-80, ORDER GRANTING CERTIFICATE OF AUTHORITY (June 16, 1989). But, unlike the applicant in Metro Fiber, MIEAC does not propose to provide services directly to end users ("inhabitants or telephone users") in competition with the PILECs. To the contrary, MIEAC will provide switched access services and operate its CEA system solely with the consent of the PILECs, by contract with them. Therefore, subdivision 1 is not relevant to MIEAC's application.

The Commission finds that Minn. Stat. §237.16, subd. 4 (1988) governs MIEAC's application. Subdivision 4 provides:

No company shall construct or operate any line, plant or system, or any extension thereof, or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require such construction operation or acquisition,....

Minn. Stat. § 237.16, subd. 4 (1988).

As indicated earlier, Subdivision 1 regulates competition that a company seeks to introduce into the geographical service area assigned to a local exchange company in its certificate of territorial authority. Subdivision 4 has an altogether different purpose. Subdivision 4 applies to applications for authority to provide telephone services that are non-local and to local telephone services that would be offered not in competition with the local exchange company, but to local exchange companies.

In assessing the MIEAC proposal to provide services to ILECs, therefore, the Commission will apply the standard enunciated in Minn. Stat. § 237.16, subd. 4 (1988) and determine whether "the present or future public convenience and necessity require or will require [MIEAC's proposed system]." Minn. Stat. § 237.16, subd. 4 (1988).<sup>5</sup>

The word "requires" as contained in Minn. Stat. § 237.16, subd. 4 (1988) does not mean absolute indispensability. Rather, it connotes propriety of the action and its consistency with the public interest. Chicago & NWR Co. v. Verschingel, 197 Minn. 580, 268 N.W.2d (1936); Dahlen Transport, Inc. v. Hahne, 261

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<sup>5</sup> Note the similarity between the Subdivision 4 standard and the one enunciated in Subdivision 1: "...that the public interest requires [the proposed facilities or operation]...." Minn. Stat. § 237.16, Subd.1 (1988). Subdivision 4 applies, however, because the articulated subject of subdivision 4 is broad enough to countenance the entire MIEAC proposal.

Minn. 218, 112 N.W.2d 630 (1962).

In determining the requirements of the public convenience and necessity in the context of authorizing an additional service provider, the Commission acts in a quasi-legislative capacity, weighing public benefit against public detriment. The Commission considers the following factors:

1. the public need for the proposed service;
2. the ability of the existing providers to satisfy the demonstrated public need;
3. the impact of granting additional market entry on existing providers;
4. the degree to which additional market entry will advance public policy objectives;
5. the level of desirable competition;
6. the impact upon ratepayers generally of authorizing a duplicate service provider; and
7. the ability of an applicant to provide the proposed service.<sup>6</sup>

## VI. BURDEN OF PROOF

The Federal Communications Commission (FCC) has shifted the burden of proof in applications under section 214 of the Communications Act, the provision of federal law governing MIEAC's application. Opponents to an application under section 214 must now show that granting the application will not benefit the public interest. Contel of Indiana, Inc., FCC File No. W-P-C-6064, Memorandum Opinion, Order and Certificate, July 12, 1988. However, the FCC has not preempted application of state law to determine the requisites of the public convenience. While federal law contains no presumption that duplication of local telephone services is to be limited, Minnesota law does. See Minn. Stat. § 237.16 (1988). As an applicant for authority to provide telephone service in Minnesota, therefore, MIEAC bears the burden of proof by preponderance that the requested grant of

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<sup>6</sup> Arvig Telephone Co. v. Northwestern Bell Telephone Co., 270 N.W.2d 111, 114-15 (Minn. 1978); Petition of American Freight Systems, Inc., 380 N.W.2d 192, 194 (Minn. Ct. App. 1986); Metro Fiber Systems, Docket no. P-495/EM-89-80, June 16, 1989 (Minn. PUC); New Ulm Freightlines, Inc., RRCC 649/A-75-24, April 24, 1979 (Minn. PUC).

authority is required by the public convenience and necessity. Minn. Rules pt. 1400.7300, subp. 5 (1989).

## **VII. WEIGHING THE PUBLIC INTEREST FACTORS**

### **A. PUBLIC NEED FOR MIEAC'S SERVICES**

The record shows that equal access service is a necessary bridge to competition between IXCs for toll traffic originating from end users in ILEC exchanges. From a theoretical viewpoint, the need for equal access to achieve competition is absolute. Without equal access service, there can be no effective competition between IXCs for long distance service to ILEC customers. Evidence of public demand for MIEAC's centralized equal access service is less clear. Many ILECs are interested in participating in MIEAC's system. However, there is not comparable evidence in the record that many IXCs wish to take advantage of MIEAC's centralized equal access system. Similarly, the record provides little basis for assessing the level of ratepayer demand for the proposed service. On balance, however, some amount of public need has been shown for MIEAC's proposed service.

### **B. ADEQUACY OF SERVICE FROM EXISTING PROVIDERS**

#### **1. ILEC Capacity to Provide Equal Access Without the MIEAC System**

Sixty-five percent (65%) of the ILEC end-offices are currently computer-controlled and 75.3% of the ILEC access lines are served by those end-offices. The computer-controlled ILEC exchanges, then, which serve a large majority of ILEC customers, are capable of providing end-office equal access by incurring relatively inexpensive end-office conversion costs. To-date, however, there is no legal requirement that they proceed with end-office conversion and very few have done so. There is no discernable movement among ILECs to move to end-office conversion at this time. By contrast, MIEAC's proposal would provide equal access now. In this respect, approval of the MIEAC proposal is preferable to waiting for ILECs to convert their end-offices at some unknown point in the future.

#### **2. USWC Capacity to Provide an Equal Access System**

In the course of this proceeding, USWC asserted its willingness and ability to deploy its own centralized equal access system. From a purely technical standpoint, it appears that USWC could provide a centralized equal access service to the ILECs. USWC's proposal, accommodating the LATA restrictions imposed on it by the Modified Final Judgment, would provide CEA from its existing

nine access tandems to ILEC end-offices that currently route their toll traffic through those tandem switches. The CEA function would be provided with NAC equipment and LEAS software, the same software MIEAC would use. USWC would provide a 1+ interLATA and 1+ intraLATA equal access service of equal quality with the MIEAC equal access service. From an engineering perspective, the following changes to the existing USWC network would be required to implement USWC's CEA proposal: equip the Windom access tandem with LEAS; equip the Owatonna access tandem with NAC; provide additional trunk terminations on the access tandems; reterminate trunks to NAC units; input translations for LEAS trunks; and input translations for NAC trunks.

Despite USWC's expressed willingness and apparent ability to implement a CEA system, ILECs have expressed a decided preference for the MIEAC plan and in fact have expressed no desire to participate in the USWC plan. In addition, the greater aggregation of toll calls achieved in the MIEAC system could make it more attractive to IXCs than the USWC system. Because the MIEAC system is more likely to be used by ILECs and IXCs, it is more likely, as a practical matter, to succeed in generating the kind of competition among IXCs that both systems seek to promote.

### **C. The Impact Upon Existing Providers**

#### **1. AT&T**

AT&T will receive no service benefit from the MIEAC network but will experience "network reconfiguration costs," i.e. the costs of adjusting its facilities to accommodate MIEAC's role in the switching and transmission of toll calls originating in PILEC exchanges. AT&T would also be required to incur the MIEAC per minute of use surcharge, one-time network reconfiguration expenditures of \$370,000 and additional annual recurring transport costs of approximately \$240,000.

#### **2. USWC**

USWC will incur rearrangement costs to accommodate the MIEAC system. Without further data from MIEAC, it is not possible to calculate the precise amount of those costs. Loss of switched access traffic will also result in excess capacity in its tandems. It is impossible to determine how long USWC may experience excess tandem capacity (underutilized plant) as a result of the MIEAC proposal. With MIEAC providing the switched access service in place of USWC, USWC would be incurring MIEAC's equal access charge on the 70-80% of the intraLATA ILEC traffic that it would continue to have, assuming USWC appears on the intraLATA ballot, subsequent to the installation of the MIEAC system.

MIEAC's system will also have an impact upon the revenues of

USWC. USWC will lose the revenue it previously received for providing switched access service to PILECs and, again assuming that USWC appears on the intraLATA ballot, will lose 20-30% of its intraLATA ILEC toll traffic to competing IXCs under an equal access system. However, with respect to the toll traffic revenue, USWC should not be protected from competition because toll services have been declared emerging competitive. Minn. Stat. § 237.59, subd. 1 (11) (1988). Moreover, USWC indicates that it loses approximately \$1.34 for every dollar of ILEC toll revenues it receives. The MIEAC system, therefore, will actually help USWC cut the losses it currently experiences in providing intraLATA toll service. The savings USWC will realize through losing part of the intraLATA ILEC toll market will offset the affect of losing the revenue from providing access service to the PILECs and paying the MIEAC equal access charge.

#### **D. Advancement of Public Policy Objectives**

Among the several public policy objectives involved in an analysis of MIEAC's proposal, the Commission will comment upon the following: competition, economic development, equitable distribution of quality telephone services, and reasonable rates.

##### **1. Policy to Promote Competition**

Competition in the provision of interLATA and intraLATA toll service is a policy goal of the FCC, the Commission and the Minnesota legislature. But while the Commission has adopted a general policy favoring competition in the provision of interexchange long distance service, this policy does not take priority over all other considerations in determining the public convenience and necessity for MIEAC's system. Moreover, the Commission has adopted no such pro-competition policy with respect to local exchange service, including switched access service.

MIEAC's system is a hybrid composed of local and toll elements. MIEAC's system aims to promote actual competition in the provision of a competitive service (interLATA and intraLATA toll service) while having as a major and inseparable component a non-competitive local service: switched access service. Moreover, MIEAC's system exhibits monopolistic as well as competitive tendencies.

##### **a. The Long Range Aim vs. the Immediate Results of MIEAC's Centralized Equal Access System**

MIEAC has demonstrated that many ILECs are interested in participating in its centralized equal access system. MIEAC has not demonstrated comparable interest from the IXCs in serving the PILEC exchanges through the MIEAC centralized equal access

system. On the record, it is clear that many ILECs would choose to purchase MIEAC's switched access service rather than USWC's switched access service. However, it is not clear to what extent MIEAC's system will result in actual competition between IXCs for PILEC toll traffic. A disadvantage of MIEAC's proposal, then, is that it assures competition for switched access service which will inevitably result in the duplication and idling of some existing service capacity, but is less sure to produce its stated public benefit: competition among IXCs for PILEC toll traffic.

b. Monopolistic Aspects of the MIEAC's Pro-Competition System

(i) MIEAC's Treatment of Feature Group B Traffic

An alternative means of access to IXCs that is currently available to subscribers of certain ILECs is Feature Group B (FG-B) access service.<sup>7</sup> With FG-B access service, the caller dials seven digits to gain access to the dial tone of a desired IXC. The caller then dials the caller's identification code, the called party's area code if the call is interLATA, and the seven-digit telephone number of the called party.

MIEAC does not propose to eliminate this competitive access method, but does propose to impose its equal access network and charge on the most prevalent FG-B configuration, delivery of FG-B traffic at the existing USWC tandem, whether or not it is actually necessary to route this traffic through the MIEAC system. There is no technical reason why FG-B traffic must be routed through the MIEAC system and no demonstrated justification for charging an IXC for a service that it does not need. Furthermore, Commission approval of such a charge would place a disincentive on IXCs who wish to provide FG-B access since under MIEAC's plan they would be charged by MIEAC whether their calls technically need to be routed through the MIEAC tandem.

(ii) Restriction of End-Office Conversion

MIEAC originally sought authority to prevent PILECs from developing their own capacity to provide equal access through converting their end-offices. In response to Intervenor criticism, MIEAC proposed that PILECs not be restricted from providing equal access at their end-offices, but that they be required to use the MIEAC tandem switch and pay the MIEAC rate for the duration of their proposed five year contracts with MIEAC. In order to avoid the MIEAC equal access charge, an IXC

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<sup>7</sup> See MIEAC Ex. 101.

would have to establish a point of presence (POP) at a PILEC end-office. In oral argument before the Commission, MIEAC modified its proposal further, requesting authority to sign contracts with PILECs that would allow a PILEC to terminate its contract with MIEAC upon three years notice.

### (iii) Terminating Monopoly

As originally proposed, MIEAC proposed to establish itself as the monopoly provider of terminating access service for all toll traffic that terminated in a PILEC exchange. During the contested case proceeding, MIEAC acknowledged that its terminating monopoly was not essential to the viability of its system and rescinded its request for a terminating monopoly. Nevertheless, it appears that the MIEAC network as proposed, if operated in conjunction with host-remote technology or the use of SS-7 technology, could reinstate MIEAC's terminating monopoly.

## 2. Policy to Promote Economic Development

The Commission is not charged by statute, nor has it adopted a specific policy to affirmatively promote economic development in the state. In assessing public benefit of a proposal against public detriment, however, the Commission clearly views as a benefit any economic development shown to result from the proposal.

The ability of MIEAC's equal access system to effect economic development in PILEC exchanges has not been adequately demonstrated. Generally speaking, an antiquated telecommunications infrastructure is doubtless an impediment to rural economic development. Achieving equal access in rural Minnesota will clearly remove one impediment to rural economic development. However, the record provides no way to gauge the size of that impediment in the context of impediments that remain. There is no evidence that the added capability to be provided by the MIEAC system (the ability to select among competing IXCs for toll service originating in PILEC exchanges) will motivate even one company to relocate or expand in a PILEC exchange.

In addition, while currently characterized as a "step in the right direction" toward rural economic development, if MIEAC's system becomes a new status quo that discourages ILECs from providing an infrastructure that more effectively promotes economic development (end-office upgrade or conversion), it may actually impede rural economic development.

In short, the record does not establish that MIEAC's system will promote economic development in non-metropolitan Minnesota.

### c. Policy to Promote Equitable Distribution of

## Quality Telephone Services

MIEAC asserts that approval of its system is a matter of simple justice for ILECs and their ratepayers because at present equal access services are concentrated in metropolitan areas and unavailable to rural telephone customers. The Commission has a strong policy in favor of universal service, is sensitive to the needs of rural Minnesota for services on a par with those available in urban areas, and seeks to promote the availability of such services. Pursuit of such a policy, however, does not necessarily require the Commission to support the MIEAC system as proposed.

It is important to focus again on the limited benefit that MIEAC's system will provide to PILEC subscribers. The sole new service that becomes available to PILEC subscribers due to the deployment of MIEAC's system is equal access service which gives end users the ability to select their interLATA and intraLATA toll carrier by presubscription. MIEAC's system will allow subscribers to avoid dialing 7 digits that are necessary under the Feature Group B access (where available) to reach their IXC of choice. Sophisticated telephone services such as call-forwarding and call-waiting do not become available to ILEC subscribers through MIEAC's equal access system; they are available to any ILEC subscribers that are served by computer-controlled end-offices. There is no indication in the record that PILEC subscribers prefer equal access service over these other services or would choose equal access service if it meant that the other services would not be available.

At present, however, 35% of the ILECs do not have computer-controlled end-offices and therefore have no capacity to offer those services to their subscribers. Nevertheless, such ILECs may participate in the MIEAC system without upgrading to computer-controlled equipment. Further, if the Commission were to adopt the FCC position on this point, once PILECs provided equal access through the MIEAC system, they would be immune to bona fide requests from IXCs to convert their end-offices. In this way, the MIEAC system would provide a significant deterrent to the upgrading of PILECs' non-computer-controlled end-offices to equipment which would provide its subscribers more sophisticated telephone services (call-forwarding and call-waiting). If permitted to become the on-going status quo in rural Minnesota, MIEAC's system could perpetuate rather than reduce the rural-urban service gap.

Consequently, MIEAC's proposal scores less than 100% when evaluated in terms of its overall potential for promoting quality services on an equal basis throughout the state.

In sum regarding policy objectives: taking these competing policy objectives into consideration and weighing the possible and known

benefits and detriments of MIEAC's plan, it is clear that the MIEAC proposal may not be approved as proposed but must be subject to certain conditions to bring it into consonance with the public interest.

### **E. The level of desirable competition**

Minnesota desires robust competition between providers of toll service. Fruits of such competition for end users should include downward pressure on rates and increased quality of service. MIEAC's plan to highly aggregate toll calls at its centralized tandem should make participation more attractive to IXCs. However, as earlier indicated, the number of IXCs that will choose to compete for PILEC toll traffic because of MIEAC's CEA is unknown at this time. Despite this uncertainty and the fact that IXC participation may vary widely from exchange to exchange, MIEAC's system does promise a base level of competition. In the event that no IXC chooses to compete with AT&T and USWC for toll traffic in any PILEC exchange, MIEAC promises that its affiliate, the Minnesota Independent Interexchange Corporation (MIIC), will offer such service in competition with the dominant providers.<sup>8</sup> The level of competition provided by a stand-in IXC such as MIIC is not the robust competition that would be provided by established IXCs who are in the business of providing more than pro-forma competition to the dominant carriers. Moreover, to-date MIIC is little more than a concept. The Commission will require greater assurance that MIIC can be operational in time to provide the modicum of competition that its presence would represent.

Despite these reservations, MIEAC's CEA proposal as modified herein appears to represent a welcome step toward competition between IXCs for PILEC toll traffic.

### **F. General Impact Upon Ratepayers**

AT&T and USWC toll customers in ILEC exchanges will receive no service benefit from MIEAC's system. In fact, the post-dial delay that they will experience as their calls travel through the MIEAC system will represent a reduction in the quality of their service. Moreover, unless AT&T and USWC decide to absorb the cost of MIEAC's access charge their ratepayers may experience a slight increase in their rates to cover these costs.

On the other hand, PILEC subscribers will now be able to obtain immediate access by presubscription to the IXC of their choice from among the interLATA and intraLATA toll service carriers available in their exchange. PILEC subscribers will not be charged by the ILEC for this increased capability, but may experience a slight increase in AT&T and USWC toll rates if they

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<sup>8</sup> In addition to MIIC, MIEAC's affiliates are: its parent company, Minnesota Equal Access Network Systems (MEANS), a holding company which owns all of the outstanding shares of stock of MIEAC and its affiliates and Minnesota Equal Access Facilities Corporation (MEAFCO), a facilities provider to MIEAC.

continue to use these carriers for their interLATA and intraLATA toll carriers, respectively. It is anticipated that approximately 70-80% of ILEC subscribers will continue to maintain their current toll carriers, AT&T and USWC.<sup>9</sup>

On balance, the slight burden absorbed by AT&T and USWC customers is overcome by the convenience and choice benefits to be experienced by PILEC subscribers.

#### **G. The Ability of the Applicant to Provide the Proposed Service**

The Commission finds that in general MIEAC has designed a sound system and plans to use reliable equipment to operate it. MIEAC's equal access network will consist of digital, fiber optic cable connecting ten TTPs located throughout Minnesota to a centralized tandem switch located in the Twin Cities area.

\* **Technology:** MIEAC will use a DMS-200 switch to provide its access services to IXCs. A DMS-200 switch was successfully used in Iowa to provide centralized equal access for both interLATA and intraLATA traffic, using LEAS software, an equal access software designed specifically for use with a DMS switch. LEAS is the same software that USWC proposed to use in its CEA service. Modern switching technology is highly reliable. MIEAC's tandem switch will be reliable state-of-the-art equipment.

\* **Network design:** Of more concern than switching is the likelihood of accidental fiber cable cuts which occur with some frequency. Risk of transport loss due to such cable cuts could be substantially alleviated by obtaining more than one transmission route between the TTPs and MIEAC's centralized access tandem in the Twin Cities.

\* **Comparative magnitude of harm in event of system failure:** The use of digital transmission facilities to concentrate traffic for switching purposes is a common feature of modern telecommunications engineering. However, MIEAC's system

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<sup>9</sup> Note: It has not been finally determined whether AT&T and USWC will continue to provide service in each or any of the PILEC exchanges. USWC and AT&T have asked the Commission to permit them to make independent business decisions whether they will continue to serve as an IXC following the establishment of MIEAC's system on an exchange by exchange basis. The Commission severed that issue for separate consideration. See MIEAC, P-3007/NA-89-76, ORDER ESTABLISHING A COMMENT PERIOD, November 26, 1990.

concentrates a significantly greater number of calls for switching at its central tandem than would be switched at any one of the tandems that USWC would use as part of its less centralized equal access system or that it currently uses to provide access services to ILECs. A switch failure at the MIEAC tandem, therefore, would affect a significantly larger number of customers than would be affected by a failure of one of the USWC switch locations. To-date, MIEAC has not developed any plan to minimize the impact of a switch failure but will be required to do so as a condition of receiving a Certificate of Authority to provide this service.

#### **VIII. COMMISSION ACTION**

As originally proposed, the MIEAC proposal did not meet the requisite standard. However, in the course of this proceeding, its disadvantages have been identified and reasonably adequate safeguards fashioned. At the same time, its benefits have been enhanced to bring the proposal as a whole into harmony with the public interest. To assure that the public interest is met, the Commission will issue MIEAC a Certificate of Authority which is subject to the following 17 conditions:

##### **A. MIEAC-PILEC Contract Length**

The promise of MIEAC's proposal, competition between IXCs for PILEC toll traffic, will have no chance of realization if MIEAC is unable to attract the capital necessary to implement its project. However, a major attraction of MIEAC's system for investors is the prospect of stable income from PILECs paying MIEAC access charges for a substantial period of time. Unfortunately, this necessary attraction results from an anticompetitive aspect of MIEAC's proposal as discussed earlier. Moreover, binding PILECs to use the MIEAC system for an extensive period of time would also block end-office conversion and the consequent availability of more advanced telecommunications services to PILEC end users. The Commission must balance MIEAC's needs to attract the capital necessary to implement its project and the desirability of promoting end office conversion in PILEC exchanges.

In order to attract the financing it needs to implement its program, MIEAC must be able to assure prospective investors and lenders that its income will be reasonably stable. MIEAC's primary income will come through providing CEA to IXCs on behalf of PILECs pursuant to contract with the PILECs. The predictability and stability of its income, then, will depend in large measure upon the length of the contracts it is able to sign with PILECs. To assist MIEAC to attract requisite capital, the Commission will authorize MIEAC to require that PILECs, as a condition of receiving MIEAC services, contractually obligate

themselves for a minimum period of three years. In addition, the Commission will place no maximum limit on the length of time that MIEAC may bind a PILEC to use the MIEAC system.

At the same time, the Commission will not permit MIEAC's contract to unreasonably interfere with end office conversion. The Commission will require that MIEAC place in its contracts with PILECs a clause acknowledging that the Commission may modify or abrogate the length of the MIEAC-PILEC contract, as necessary, if the Commission later decides to order the PILEC to honor a bona fide request from an IXC that the PILEC convert its end office. See Section G, *infra* at page 23 regarding the Commission's decision to consider subsequent bona fide requests for end office conversion on a case by case basis.

### **B. Specific Services Authorized**

Certificates of Authority are not general, but only grant authority to provide the services specified by the Commission in the Orders that grant them. The Commission does not grant general authority, as requested by MIEAC, to provide unspecified services. MIEAC argued that it should receive authority to provide SS-7 services but did not indicate which services it planned to provide or when it planned to provide them.

The services that MIEAC will be authorized to provide under this Order are limited to the following: originating equal access service and recording services, and optional terminating access service. MIEAC is prohibited from providing any other services under this Certificate of Authority, including any local services in LEC exchanges in the Twin Cities metropolitan area.

### **C. Rate Issues**

#### **1. Procedure for Determination of Rates**

It is not possible for MIEAC to determine its specific cost of service at this time because of the many variables: e.g. number of PILECs and participating exchanges, cost of the switch, and the cost of leasing transmission facilities. The Commission will defer setting final rates for MIEAC's services and will condition its approval of MIEAC's application upon it making a true-up rate filing when its costs are known.

The Commission will conduct a thorough review of MIEAC's proposed rates at the time of the true-up filing. The support for these rates is the support needed for a general rate case and will include copies of major contracts, leases for transmission capacity, the purchase contract for the switch and related facilities, and 1989 minutes of use data. MIEAC will also need to provide evidence of its rate base and expenses, projections of minutes of use, and calculation of its required rate of return on

equity and overall rate of return in order for rates to be set. The cost study that MIEAC files as part of this process must contain enough detail to enable parties to determine that costs have been properly allocated between MIEAC and its affiliates.<sup>10</sup>

## 2. MIEAC's Capped Rate Proposal

As an interim means of estimating whether this proposal is likely to result in service provided at "reasonable rates", MIEAC proposes 1) to charge IXCs no more than a "capped rate" of \$.0099 per minute of use during the first year of service; 2) to cap its transmission and switching costs at the \$.0099 level for five years; and 3) if its other costs in years two through five increased so that it became unable to meet its revenue requirement at the \$.0099 rate, it would be allowed to seek a rate increase in a proceeding under Minn. Stat. § 237.075 (1988) not to exceed \$.0126 per minute of use.

While the actual rates will be set in a subsequent proceeding held to examine MIEAC's true-up filing, the Commission finds that these parameters provide adequate assurance that the equal access service authorized herein will be offered at reasonable rates. Consequently, these parameters add significant present value to the MIEAC proposal. To assure that these parameters are securely in place, the Commission will require MIEAC to sign the following statement as a condition of receiving this certificate of public convenience and necessity:

As a condition of receiving a certificate of public convenience and necessity, MIEAC agrees to waive any claim it may have to a CEA rate greater than \$.0099 per minute of use in the first year of operation and a \$.0099 per minute cap on switching and transmission costs and an overall CEA rate cap of \$.0126 per minute of use for the subsequent four years of operation. Furthermore, MIEAC agrees that the calculation of the \$.0099 and \$.0126 CEA rate caps will be reduced based upon revenues from transport under an unbundled rate design. This lower CEA rate will serve as the legal rate cap by which MIEAC agrees to be bound. Finally, the rate caps are based upon the condition that no terminating monopoly will exist or be reinstated.

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<sup>10</sup> MIEAC's affiliated corporations are the following: Minnesota Equal Access Network Systems (MEANS), the holding company which owns all of the outstanding shares of stock of MIEAC and its affiliates; Minnesota Equal Access Facilities Corporation (MEAFCO), a facilities provider to MIEAC; and the Minnesota Independent Interexchange Corporation (MIIC) which is proposed to operate as an alternative IXC to either USWC or AT&T in any PILEC exchange for which no other IXC chooses to offer services.

### 3. Unbundled Rates

MIEAC proposes to charge a bundled rate which would include transport from an originating TTP to its central MIEAC tandem, carrier selection and switching function at the central tandem, and transport back to the originating TTP if desired by the IXC. The Commission will require MIEAC to propose an unbundled non-distance sensitive rate in its true-up filing for the following reasons:

Unbundling will reflect how MIEAC's services are provided. There are two distinct functions being performed by MIEAC: CEA and transport. An IXC that has already deployed its network to intersect at USWC's access tandems or a new IXC that did so could have obtained CEA at that point under USWC's CEA and receives no benefit from the transport that is necessitated by the MIEAC central tandem network design. Under a bundled rate, such an IXC would pay for transport to MIEAC's centralized access tandem in the Twin Cities and back. This would be unfair because it would be making the IXC that is located at or near USWC's access tandems pay for a service that provides it no benefit. Bundling also encourages distorted network development. Without a separate charge for transport, IXCs would develop their networks based upon a subsidized MIEAC transport service. This could result in IXCs failing to promote end office conversion when it becomes economical.

MIEAC's proposed rates should be unbundled and non-distance sensitive. Customers in exchanges distant from the MIEAC tandem should not be penalized because of the geographic location of MIEAC's switch. The entire cost of transport for all calls taken at the MIEAC tandem should be averaged over all calls on a per minute of use basis and charged to IXCs interconnecting at the MIEAC tandem.

### 4. Rates for FG-A and FG-B Access

Currently, ILECs provide IXCs with FG-A and FG-B access service at a 55% discount because competing IXCs do not have available to them the same quality of access as AT&T. With MIEAC's CEA system in place, however, all IXCs will have the opportunity to receive the same quality of service. The FCC has allowed carriers to temporarily charge premium access rates when CEA service is provided but has opened an Alternative Technology Docket (CC Docket No. 88-287) in which it may reconsider its decision allowing ILECs to charge premium access rates when CEA is provided. The Commission has generally followed the FCC's access charge regime and has adopted the same premium/non-premium differential regulations.

Therefore, under this Certificate of Authority, MIEAC will be permitted to charge premium access rates at this time. If the FCC reconsiders its decision and determines that a premium access

charge is inappropriate, however, the Commission will by further Order require MIEAC to justify charging premium rates.

#### 5. Rates Where AT&T is the Sole InterLATA Carrier

Failure of the MIEAC system to achieve competition in every PILEC exchange, at least at the level provided by an operational MIIC, would be a substantial shortcoming. Concern to prevent such an eventuality is expressed elsewhere in this Order, including the requirement that MIEAC provide further assurance of the viability of MIIC.<sup>11</sup> In exchanges where no competition to AT&T appears, however, the customers who currently have AT&T as their interLATA toll carrier will receive no benefits of competition and no better service after MIEAC. In such circumstances, of course, MIEAC will be prohibited from imposing its surcharge upon the traffic from such exchanges. This prohibition will prevent an obvious inequity caused by such a failure of the MIEAC system.

#### D. Disaster Recovery Plan

As indicated earlier, MIEAC's network design acutely aggregates calls at one central access tandem. While this high degree of aggregation may stimulate IXCs to participate in the MIEAC system, it also means that switch failure at that central point would create a major disruption to toll service in Minnesota. This potential problem must be addressed. To assure that reasonable safeguards are in place before the start-up of the MIEAC system, the Commission will require MIEAC to submit a satisfactory disaster recovery plan as part of its true-up filing.

#### E. Terminating Monopoly

In its testimony, MIEAC rescinded its request to be the monopoly provider of access service for toll calls terminating in a PILEC exchange. However, the use of host-remote technology or the establishment of SS-7 services in conjunction with the MIEAC network could result in MIEAC establishing a de facto terminating monopoly. Such a monopoly is not in the public interest. To guard against the establishment of such a monopoly and as a condition of approving MIEAC's certificate, the Commission will prohibit MIEAC and its affiliates and the PILECs from establishing a terminating monopoly by any proposed service or present or future technology that currently exists in PILEC exchanges or that will be installed or implemented there. Since PILECs are not parties to this matter, the Commission will implement this prohibition among the PILECs by requiring MIEAC, as a condition of granting this certificate, to place in its contracts with the PILECs a provision prohibiting the PILECs from

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<sup>11</sup> Infra at Section K on page 25 of this Order.

establishing a terminating monopoly.

#### **F. The Routing of Feature Group B Traffic**

MIEAC proposes that FG-B originating traffic be required to be routed through the MIEAC tandem and be charged the MIEAC access rate. For digital end offices (65% of end offices) there is no technical reason why outgoing FG-B traffic must be routed through the MIEAC system and no justification for charging an IXC for a service that it does not require. The Commission does not approve of this anticompetitive aspect of MIEAC's proposal. As a condition of granting MIEAC a certificate of authority, therefore, the Commission will require MIEAC to allow FG-B traffic to use the existing network and prohibit it from imposing the MIEAC charge on traffic using such network. Further, where FG-B traffic is routed to MIEAC's centralized switch over the same circuits as toll traffic due to end office technical limitations, the MIEAC access charge should not be assessed.

#### **G. Bona Fide Requests for End Office Conversion**

The provision of equal access capability through end office conversion is preferable to MIEAC's CEA system because it provides the capability to offer enhanced end-office features, lowers the cost of switch maintenance, and unlike CEA does not increase post-dial delay. A potential catalyst of end-office conversion is a bona fide request from an IXC that an ILEC convert its end-office. Under FCC policy, an ILEC with computer-controlled equipment receiving such a request must convert its end-office within three years. However, if the ILEC offers equal access through CEA, FCC policy is that the ILEC need not comply with an IXC's request that it convert its end office. The Commission need not adopt this additional part of the FCC policy and expressly declines to do so. Rather than declaring PILECs immune from IXC requests to convert its end-offices once they offer centralized equal access, the Commission declares that it will examine bona fide requests for end-office conversion as they occur and determine on a case by case basis whether it will require the PILEC to comply with the request.

In so doing, the Commission strengthens MIEAC's proposal two ways. First, it mitigates the disadvantage of the MIEAC system that it stands as an impediment to end-office conversion. In deciding to determine the effect it will give to bona fide conversion requests on a case by case basis, the Commission does not eliminate this detrimental aspect of the MIEAC system completely, but does establish the possibility that such detriment may be removed in proper circumstances. Second, in so doing, the Commission strengthens MIEAC's claim to be viewed as an alternate provider rather than as a substitute monopoly provider as USWC would have MIEAC's proposal judged.

#### **H. Process for Locating TTPs**

To minimize the reconfiguration costs of the dominant carriers (AT&T and USWC) who have already deployed their networks, the Commission will require MIEAC to consult with them regarding the location of its TTPs.

#### **I. Maintenance of Existing Local Transport Arrangements**

Under the current toll network configuration, USWC and the ILECs each own portions of the transport facilities and USWC owns the access tandems. USWC realizes a substantial amount of revenue from this local transport service. In the MIEAC system, MEAFCO owns the access tandem and leases it to MIEAC. This presents an opportunity for PILECs to build transport facilities directly from their end offices to the TTPs, thereby bypassing USWC's transport facilities.

MIEAC indicates that the MIEAC network will make use of the existing transport facilities between PILEC end offices and the USWC access tandems (where MIEAC proposes to establish its TTPs) and that it will not disrupt or alter existing meet point arrangements. Despite MIEAC's representations that its present intentions are not to disrupt local transport arrangements, its system would provide PILECs an incentive to provide all of the local transport service and receive all of the revenue therefrom by bypassing USWC transport facilities. It may be in the PILECs' interest to do so, but before approving such a major change in the telecommunications network, the Commission will need to examine the impact that such bypass would have upon the public interest. In so doing, the Commission would consider such factors as the impact upon USWC ratepayers and determine whether the bypass would result in an unnecessary duplication of facilities.

No actual bypass proposal is before the Commission and the potential initiators of such a bypass (PILECs) are not even parties to this action. Therefore, the issue is not ripe for decision and the Commission will not decide at this time whether it will permit such a bypass of existing facilities. The Commission will, however, guard against this potential development occurring without prior authorization from the Commission. The Commission will require MIEAC to include in its contracts with PILECs a provision prohibiting PILECs from effecting such a bypass without first securing Commission review and approval.

#### **J. Accounting and Reporting Requirements**

MIEAC and its affiliate MEAFCO indicate that in addition to the regulated activity (provision of telephone service) that is subject to this proceeding, they intend at some point in the future to engage in certain as yet unspecified activities. The Commission's concern is to assure that costs of the various

activities are properly allocated and that revenue from regulated activity is not used to subsidize unregulated activities.

Accordingly, the Commission will require that MIEAC and its affiliates follow FCC rules regarding cost allocations and affiliate transactions embodied in rule Parts 32 and 64. Rule Part 64 prescribes how costs are to be allocated between regulated and nonregulated activities and Rule 32.27 addresses transactions between regulated and nonregulated affiliates. In addition, to assure that the appropriate allocation has been made and that rates have been adjusted as necessary, the Commission will require prior notice of any proposed unregulated activity. Such notice will include information sufficient to enable the Commission to determine compliance with the cost allocation and affiliated transactions rules. For proposed activities that represent less than 2% of the company's existing revenue, the company will give 60 days prior notice; for proposed activity representing more than 2% of existing revenue, the company will give 120 days notice.

#### **K. Regulation of MEAFCO**

Under MIEAC's proposal, MEAFCO would not be regulated as a telephone company. MIEAC argues that MEAFCO is not a telephone company and is therefore not subject to regulation by the Commission. The Commission disagrees. Minn. Stat. § 237.01, subd. 2 (1988) defines a telephone company as

any ...corporation, ... , owning or operating any telephone line or telephone exchange for hire, wholly or partially within this state, or furnishing any telephone service to the public.

Minn. Stat. § 237.01, subd. 2 (1988).

In Northwestern Bell Telephone Co. v. Minnesota Public Utilities Commission, 420 N.W.2d 646 (Minn. Ct. App. 1988), the court held that the provision of operator service and directory assistance to ILECs was a provision of telephone service to the public. In making this determination, the court looked to the presence of the service provider's market power and the ability of the purchaser of the service to negotiate. In this case, MIEAC has agreed to lease the switch only from MEAFCO, equal access software installed in the switch will be specific to MIEAC's needs, and the switch will be hard-wired to MIEAC's transmission system. As a result of these arrangements MEAFCO's market power over MIEAC is complete and MIEAC's power to negotiate is eliminated. Similarly, MEAFCO will clearly exert market power over PILEC customers who have only one option for routing 1+ toll calls to an access tandem. In these circumstances, MEAFCO provides telephone service to the public within the meaning of Minn. Stat. § 237.01, subd. 2 (1988) and will, therefore, be

subject to regulation as a telephone company.

#### **L. Viability of MIEAC's Alternate IXC, MIIC**

The attraction of the MIEAC proposal is the prospect that it will result in competition among IXCs for toll traffic originating in the PILECs' exchanges. Since it cannot assure whether any IXCs will actually be induced to compete with AT&T and USWC for PILEC traffic, MIEAC offers the MIIC as a backup measure. For every PILEC exchange where CEA does not attract competing IXCs, MIEAC states that its affiliate, Minnesota Independent Interexchange Corporation (MIIC), will offer interLATA and intraLATA service, thereby guaranteeing a modicum of competition. This guarantee of a back-up competitor is material to the Commission's approval of MIEAC's proposal.

At this time, however, MIIC is little more than a concept. No steps have been taken to ensure that MIIC will be a viable competitor. Therefore, the Commission will condition MIEAC's certificate on it providing to the Commission in its true-up filing sufficient information to satisfy the Commission that MIIC could provide timely service as an IXC and participate in a balloting and allocation process.

#### **M. Avoiding Post CEA Conversion Problems**

Several problems occurred in the process of converting to the CEA system in Iowa. These problems should be avoided:

\* First, the conversion process was confusing for IXCs, ILECs and end users. ILECs that had not originally planned to participate were added in the middle of the conversion. ILECs changed their level of involvement by deciding to participate on only an interLATA basis instead of for both interLATA and intraLATA. Conversion dates were established, delayed and rescheduled frequently and on short notice. To avoid this confusion, MIEAC will place restrictions and firm deadlines on the LECs who desire to participate.

\* Second, IXCs experienced billing and collection problems due to receiving multiple inaccurate or incomplete customer lists from the CEA provider in Iowa. MIEAC has agreed to provide IXCs only one universal list which is as accurate as possible.

\* Third, IXCs participating in the CEA system in Iowa were not given a choice in routing calls. MIEAC has agreed to ensure that there is an alternate FG-B terminating route which will alleviate any scheduling problems.

\* Fourth, to assure proper routing of zero minus (0-) calls, MIEAC will send 0- calls to the operator service chosen by the ILEC.

To confirm these improvements, the Commission will require MIEAC to file with the Commission in its compliance filing its timeline and the informational material it intends to provide ILECs, IXCs and end users for the establishment of its CEA in Minnesota.

### **CONCLUSION**

The Commission finds that, as modified by the requirements and conditions set forth in this Order, MIEAC's system of providing centralized equal access is consistent with the public interest. The Commission determines that the present and future public convenience and necessity require the construction and operation of such a system. The Commission will grant MIEAC a certificate of authority to provide this service in a manner consistent with this Order.

### **ORDER**

1. Minnesota Independent Equal Access Corporation (MIEAC) and its affiliate Minnesota Equal Access Facilities Company (MEAFCO) are hereby granted Certificates of Public Convenience and Authority to provide centralized equal access (CEA) services subject to compliance with the seventeen (17) conditions listed in the text of this Order.
2. Within nine months of the date of this Order, MIEAC shall make a compliance filing containing the following:
  - a. A demonstration of how each of the 17 conditions listed in the text of this Order has been or will be met.
  - b. A cost-based centralized equal access rate and a cost-based, non-distance sensitive rate for transport with supporting cost analysis.
  - c. The necessary support for MIEAC's proposed revenue requirement including, but not limited to, copies of major contracts, copies of leases for transmission capacity, the purchase contract for the switch and related facilities, 1989 minutes of use data, projected minutes of use, rate base, income statement, proposed rate of return on equity, capital structure and overall rate of return.
  - d. Projected revenue and expenses for the first two years of operation.

- e. Report of financing and investing activity from inception to 10 days prior to filing compliance requirements.
  - f. Revenues and expenses from inception to 10 days prior to filing compliance requirements.
  - g. Cost allocation manual that will be used to allocate costs between regulated and non-regulated operations.
  - h. A disaster recovery plan.
  - i. A copy of the contract MIEAC will have with the individual PILECs which includes the provisions contained in this Order.
  - j. Information regarding MIIC which will assure the Commission that MIIC could provide timely service as an interexchange carrier and participate in a balloting and allocation process.
  - k. A timeline of MIEAC's plans for operation and a copy of the informational material MIEAC intends to provide to the ILECs, IXCs and end users for the establishment of its CEA.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)