

P-999/CI-90-235 ORDER AUTHORIZING THE RESALE OF CENTRON SERVICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of a Commission-
Initiated Proceeding to
Determine Whether Resale of
Local Telephone Service is in
the Public Interest

ISSUE DATE: January 19, 1993

DOCKET NO. P-999/CI-90-235

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CENTRON SERVICE

PROCEDURAL HISTORY

On March 12, 1986, Duddy Limited Partnership (Duddy) filed a petition with the Commission requesting a certificate of public convenience and necessity pursuant to Minn. Stat. § 237.16, subd. 4 (1990) to resell local telephone service to the tenants in a downtown Minneapolis building. Docket No. P-467/M-86-141.

On April 29, 1987, the Commission issued two Orders: the first, in Docket No. P-467/M-86-141, granted Duddy limited authority to resell local telephone service to the tenants; the second initiated the 228 Docket, a generic investigation to determine whether the resale of local service is in the public interest, and if so, whether local resale should be allowed in Minnesota. Docket No. P-999/CI-87-228.

In July 1987, prior to the conclusion of the investigation in the 228 Docket, the Minnesota legislature enacted the private shared telecommunications services (PSTS) statute, Minn. Stat. § 237.68 (1987). The statute permitted one variety of local resale: sharing of local telephone services.

On August 1, 1988, the Commission closed the 228 Docket and initiated a rulemaking docket (Docket No. P-999/R-88-357, the 357 Docket) to formulate a set of requirements for the sharing of local telephone services pursuant to Minn. Stat. § 237.68 (1987).

On December 19, 1989, the Commission issued an Order stating, among other things, that it did not have sufficient information to determine whether the resale of local telephone service was in the public interest. The Commission directed U S West Communications, Inc. (USWC) to submit a cost study indicating the impact that the resale of local service, if allowed, would have on USWC's customers, operations, revenues and expenses.

On January 31, 1990, USWC filed its study and a proposed protective order regarding the study.

On April 4, 1990, the Commission met on its own motion to consider USWC's study and on April 17, 1990, issued a notice informing parties of the Commission's finding that USWC's study did not meet the standard set by the Commission and decision to sever the resale of local telephone service issue from the current 357 Docket, establish a new docket for the issue and refer it to the Office of Administrative Hearings (OAH) for a contested case hearing before an Administrative Law Judge (ALJ). In the notice, the Commission requested comments from the parties regarding what issues should be the focus of the OAH hearings.

On May 30, 1990, following receipt and consideration of comments filed by eleven parties, the Commission issued its ORDER SEVERING LOCAL RESALE ISSUE, INITIATING SEPARATE LOCAL RESALE DOCKET AND NOTICE OF HEARING. The Commission established the current docket (Docket No. P-999/CI-90-235, the 235 Docket) to process the local resale issue and directed the Administrative Law Judge (ALJ) to investigate and make findings in nine specific areas:

1. Is the resale of Centron/Centrex in the public interest?
2. Is the resale of PBX services in the public interest?
3. What is the appropriate definition or definitions of local service resellers?
4. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what regulation should be applied?
5. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what type of rate structure would be appropriate?
6. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, how should resellers price their Centron/Centrex or PBX services to end-users?
7. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, what would be the LEC's responsibilities to the resellers and the end-users served by the resellers?
8. If resale of Centron/Centrex or resale of PBX services is found to be in the public interest, should the Commission grant authority on a state-wide basis or limit that authority to specified geographic service areas?

9. Are there differences between geographic service areas within the state that would render resale of Centron/Centrex service or the resale of PBX services in the public interest in some service areas and not in the public interest in others?

The May 30, 1990 Order also named five parties to the contested case proceeding: the Minnesota Department of Public Service (the Department), the Residential Utilities Division of the Office of the Attorney General (RUD-OAG), Enhanced TeleManagement, Inc. (ETI), USWC and the Minnesota Independent Coalition (MIC). The following parties filed petitions to intervene: TeleTech, United Telephone Company, the Minnesota Business Utility Users Council (MBUUC), Fairchild Communications Services Company, and Centex TeleManagement, Inc.

In March 1991, the Minnesota legislature enacted Minn. Stat. § 237.067 (1991) which exempted on-premises telephone service provided by hotels, motels, restaurants, lodging houses, boarding houses, resorts, and places of refreshment licensed under Chapter 157 from regulation under most of Chapter 237.

On July 1, 1991, the Department filed a motion with the ALJ requesting clarification of the Commission's May 30, 1990 Order in light of the enactment of Minn. Stat. § 237.067 (1991). The Department noted that under the new statute, hotels, motels, restaurants, lodging houses, boarding houses, resorts, and places of refreshment licensed under Chapter 157 that provide telephone service are still subject to the requirement that their rates be fair and reasonable. The Department asked whether the issue of appropriate rate structure for these PBX resellers should be addressed in this proceeding. On July 8, 1991 the ALJ certified the motion to the Commission for consideration. The Commission declined to rule on the motion.

The ALJ held evidentiary hearings on 28 days between July 22 and October 11, 1991.

On December 20, 1991, USWC filed with the Commission a notice of change in the structure and price for, among other services, its CENTEX and CENTRON services. USWC proposed a new pricing plan, CENTREX PLUS, to replace the existing Centrex and Centron pricing plans. The Commission assigned the matter to Docket No. P-421/EM-91-1002 and on December 31, 1991 requested that parties comment regarding the effect of the 1002 Docket upon the 235 Docket.

On February 10, 1992, the ALJ issued a posthearing Order directing the parties to file a copy of any comments filed by the party in the 1002 Docket regarding the effect of that docket on the 235 Docket and held a posthearing conference regarding this question on February 14, 1992.

On April 9, 1992, the ALJ issued a second posthearing order, denying ETI's request to reopen the record of the 235 Docket due

to inconsistencies in the factual presentations made by USWC in the 1002 and 235 dockets. The ALJ found that the record gave the Commission a fair basis for resolving the public interest questions posed in its May 30, 1990 Order referring the matter for contested case proceedings.

On April 9, 1992, the ALJ also issued his FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION, responding to each question referred by the Commission in its May 30, 1990 Order. The ALJ recommended that the Commission issue an Order

1. determining that CENTRON resale in USWC exchanges is in the public interest;
2. directing USWC to include in its CENTRON tariff a flat surcharge per line to recover lost or displaced contribution in the amount of \$893,000;
3. directing USWC to make that surcharge revenue neutral 1) by simultaneously filing corresponding reductions in other service rates or 2) in the event that USWC was unable to identify the services that are currently paying the displaced contribution, by reducing the rates charged residual ratepayers;
4. listing the information a reseller must file with the Commission before the reseller commences reselling CENTRON services in USWC exchanges;
5. requiring resellers to file their price lists with the Department and the Commission;
6. stating clearly that a CENTRON reseller is a customer of the LEC for purposes of the Commission's rules and a telephone company as regards its own customers;
7. instituting a separate rulemaking proceeding if the Commission desires to alter any of its rules that are applicable to telephone companies to specifically accommodate CENTRON resellers.

On April 27, 1992, the RUD-OAG filed exceptions to the FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION of the ALJ, hereinafter the ALJ's Report and ETI filed its exceptions on April 29, 1992.

On May 11, 1992, the Department filed reply comments regarding the exceptions filed by the RUD-OAG and ETI and USWC and ETI replied to each other's exceptions.

On November 6, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

I. VARIETIES OF LOCAL RESALE

Resale of local telephone service (local resale) is the sale of local exchange company (LEC) services to a diverse and legally unrelated set of end-users by an entity that has purchased a quantity of those services from the LEC. There are three varieties of local resale differentiated on the basis of equipment utilized:

1. CENTRON Resale: resale of CENTRON, a USWC business telecommunications service that allows individuals within a community of users to communicate internally or with the public switched network using a switch owned and managed by the LEC and located in its central office.
2. PBX Resale: resale of local telephone service, i.e access to the public switched network [dial tone] using the switching capacity and abilities of a privately-owned premises-based switching system (PBX) to complete calls to entities attached to that network. This category of resale includes 1) private shared telecommunications services (PSTS) by resellers who use a PBX to deliver local service to their customers and 2) PBX-delivered local service that does not qualify as PSTS.
3. Customer-Owned Pay Telephone Service: provision of telephone service through payphones owned by entities other than the LEC is a variety of resale because the payphone owner purchases access to the local public switched network and resells that access to its customers.

II. VARIETIES OF LOCAL RESALE AT ISSUE HERE

In its May 30, 1990 Order referring this matter for contested case hearing, the Commission noted that some varieties of local resale have already been found to be in the public interest and are allowed in Minnesota: in a previous docket, the Commission had authorized the customer-owned pay telephone variety of local resale¹ and the legislature had authorized the PSTS variety of PBX resale in Minn. Stat. § 237.68 (1988). In the May 30, 1990 Order, the Commission specified that it sought to determine

¹ In the Matter of the Complaint by Airport Systems, Inc., Tonka Tools, Inc. and Country Village Spur Upon Refusal of Northwestern Bell Telephone Company to Allow Attachment of Customer-Owned Coin-Operated Telephones, Docket No. P-421/C-82-4645 (June 29, 1984).

whether, and under what conditions, it would authorize the non-pay telephone, non-shared tenant services (non-PSTS) varieties of resale of local telephone service in Minnesota.

During the pendency of this matter, another segment of local resale has been found to be in the public interest. In June 1992, the Minnesota legislature enacted Minn. Stat. § 237.067 (1991). In its June 26, 1992 Order in Docket No. Docket No. P-1589/CT-92-19, the Commission reviewed this statute and found that certain establishments listed in the statute do not need a certificate of authority to provide on-premises telephone services to their customers.² Because the exempted establishments sometimes provide telephone services to their customers on-site via PBX resale, the legislature impliedly found that the on-site provision of PBX resale by those establishments to their customers was in the public interest, thereby eliminating the need for the Commission to consider that segment from its public interest inquiry in this docket. Hereafter, the on-site provision of telephone services by the establishments listed in the statute to customers of those establishments using a PBX will be referred to as "exempt entity PBX resale".

Accordingly, the public interest analysis in this Order will focus on the varieties of local resale that have not been authorized in Minnesota to-date: 1) the resale of CENTRON and 2) non-PSTS, non-exempt entity PBX resale. Each will be considered in turn.

III. REALE OF USWC'S CENTRON SERVICE

Minn. Stat. § 237.16, subd. 4 (1990) states in part:

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 necessity require or will require such...acquisition [of control],.... (Emphasis added.)

A CENTRON reseller subscribes to CENTRON service provided from the central office serving the area in which the reseller desires to resell local exchange service. The reseller subscribes to a certain amount of incoming and outgoing access to the public switched network. The reseller neither purchases nor operates facilities or equipment used to provide CENTRON service. However, the reseller clearly "controls" and "operates" a telephone "system" within the meaning of this statute.

² In the Matter of an Application by the Locker Room Bar for Authority to Provide Coin-Operated Telephone Service in the State of Minnesota, Docket No. P-1589/CT-92-19, ORDER GRANTING AUTHORITY TO PROVIDE CUSTOMER-OWNED PAY TELEPHONE SERVICE IN MINNESOTA (June 26, 1992), page 3.

The Commission, therefore, has the authority and responsibility under Minn. Stat. § 237.16, subd. 4 (1990) to evaluate the proposed new service, resale of CENTRON, to determine whether the public convenience requires it.³

When determining the requirements of the public convenience and necessity in the context of additional service providers under Minn. Stat. § 237.16, subd. 4 (1990), such as CENTRON resellers, the Commission acts in a quasi-legislative capacity, weighing public benefit against public detriment and giving consideration to all appropriate factors. Arvig Telephone Co. v. Northwestern Bell Telephone Co., 270 N.W.2d 111, 114-15 (Minn. 1978). The word "requires" as contained in Minn. Stat. § 237.16, subd. 1 and 4 (1990) does not mean absolute indispensability. Rather, it reflects the propriety of the action and its consistency with the public interest. An additional service provider should be authorized if it is more probable than not that the grant of authority requested will result in a net benefit to ratepayers generally. In the Matter of the Minnesota Independent Equal Access Corporation's Application for a Certificate of Public Convenience and Necessity, P-3007/NA-89-76 (January 10, 1991).

In weighing public benefit against public detriment to make its public convenience determination in this matter, the Commission considers at least seven factors:

A. Public Benefit of CENTRON Resale

Since USWC already provides CENTRON service, the question is what additional benefit occurs through the resale of CENTRON by other entities? The status quo service comparison is USWC's 1FB/1FH service.

1. Expanded Availability of Sophisticated Business Service Options

USWC's CENTRON service provides a variety of optional features to end-users that are not available with 1FB/1FH service. Because of volume discounts inherent in USWC's CENTRON tariff, CENTRON service directly from USWC is not an economical option for small

³ ETI asserted a right to on-going authority to resell local service. ETI argued that it could not be denied the right to continue to provide that service unless its certificate was revoked pursuant to Minn. Stat. § 237.16, subd. 5 (1990). That statute provides for the revocation of a certificate of authority only if the Commission finds that the certificate holder failed to furnish reasonably adequate service. Contrary to ETI's assertion, Subdivision 5 does not apply to this case. As the Commission has previously found, ETI does not have a certificate of authority to resell local service and only has temporary authority to do so pending the outcome of this generic proceeding. In the Matter of an Application to Resell Telephone Service in the State of Minnesota, P-449/M-84-169 (October 10, 1990).

and medium-sized businesses with fewer than 20 lines. Resellers of CENTRON, however, can provide CENTRON to a segment⁴ of small and medium-sized businesses at a rate that makes CENTRON an economical option. In so doing, CENTRON resellers unquestionably expand the availability of sophisticated business options to such customers.

USWC argued that most ETI customers do not in fact select the more sophisticated CENTRON services and tend to limit the optional features selected to those commonly available with 1FB/1FH service. USWC also noted that the availability of resold CENTRON is itself limited. First, it can only be resold in exchanges where USWC offers CENTRON. Second, because the price of CENTRON increases as the distance between the end user and the central office increases, most ETI customers are located within one mile of the serving central office and a very high percentage of its customers are located within one-half mile of the serving central office. Finally, ETI cannot effectively offer resold CENTRON unless it purchases 20 CENTRON lines per building from USWC.

Despite these limitations on the availability of resold CENTRON, the fact remains that a not insignificant number of small and medium-sized businesses can avail themselves of the service and have chosen to do so. To that extent CENTRON resale unquestionably provides benefit.

2. Increased Choice

Resold CENTRON maximizes customer choice among a certain segment of business customers by making an alternative service available at an economic rate. In buildings with telephone demand insufficient to support an on-site PBX system, resold CENTRON provides choice over USWC's 1FB/1FH business service. To customers for whom it is an economic option, resold CENTRON provides an alternative to PSTS and 1FB/1FH. This expanded area of consumer choice allows small businesses to tailor their telecommunications service to meet their specific needs.

⁴ Resold CENTRON service is not available to all business customers. Obviously, CENTRON can only be resold in service areas where USWC offers CENTRON. Currently, USWC offers CENTRON only in the major population centers. In addition, the applicable CENTRON tariff dictates those business customers to whom it is cost-effective to market the resold CENTRON service. Under the existing CENTRON tariff, a reseller cannot offer service at a competitive rate unless it purchases 20 CENTRON lines per building from USWC and, because CENTRON rates are distance sensitive most ETI customers are located within a mile of the serving central office and a high percentage of ETI's customers and lines are located within one-half mile of the serving central office.

3. Auxiliary Services

The value of incidental services provided by the CENTRON reseller is considered when weighing the public benefit derived from CENTRON resale if such services are sufficiently related to telecommunications service and are not available from the current providers, in this case USWC.

ETI offers voice mail service, resells long-distance service through a variety of long distance providers and offers several auxiliary services to its customers in conjunction with resold CENTRON service: consultation and system design services, installation and training services, telecommunications troubleshooting and repair services, and single billing services. As such, ETI offers a one stop shopping source for small and medium-sized business customers and can serve, in effect, as the telecommunications manager for small firms that may not be able to employ a telecommunications specialist.

The Commission finds that these auxiliary services are directly related to the provision of telephone service and are not available from USWC on an equal basis. For example, as a result of the Modified Final Judgement (MFJ), USWC cannot provide Customer Premise Equipment consultation or interLATA toll service. Even where USWC can offer the same auxiliary services as ETI offers, the fact that customers can choose between ETI and USWC as the provider of those services promotes the quality of those services and is a benefit to the end user.

Customer demand for ETI's combined service offering is an indicator of the benefit that customers find in that service. The Commission finds that the resold CENTRON service provided by ETI results in a significant stimulation of demand for service among its customers that cannot entirely be accounted for by the availability of lower rates.

4. Cost Savings and the Reduction of Certain Contribution Loss Due to CENTRON Resale

When any 1FB/1FH customer moves to resold CENTRON, USWC experiences some reduction of its administrative expenses associated with providing 1FB/1FH service to that former customer and since ETI bills its end-users and assumes the risk of end-user payment, resale of CENTRON has a positive impact upon USWC's customer bad debt loss. These impacts are quite small currently.

In addition, because resold CENTRON makes a greater contribution than either a stand-alone PBX or PSTS PBX service, to the extent that increased CENTRON usage displaces either of these other alternatives to 1FB/1FH or is chosen by a 1FB/1FH customer in place of a PBX-type service, USWC experiences more contribution, receives more benefit in this regard from the availability of resold CENTRON than if it were unavailable.

5. Other Benefits of CENTRON Resale

The record in this case does not develop this point, but economic efficiency and optimal business location are theoretically affected positively by CENTRON resale. CENTRON resale does assist certain small businesses, which is a public policy benefit.

ETI also asserted that resold CENTRON is consistent with an emerging state policy to encourage competition in the local service telecommunications market. While the Minnesota legislature has adopted statutes to increase and recognize competition in the telecommunications industry in general [Minn. Stat. § 237.625 (1990), Minn. Stat. § 237.635 (1990) and Minn. Stat. § 237.071, subd. 2 (1990)], the Commission has not interpreted these statutes as requiring or favoring unlimited competition in the local exchange service market. When the Commission has authorized competition in the provision of local exchange service, it has adopted policies which limit the adverse impact on the local exchange company (LEC) and ratepayers generally. In the Matter of the Filing by Metro Fiber Systems to Provide Systems to Provide Certain Telecommunications Services Within Minneapolis and St. Paul, Minnesota, P-495/EM-89-80, ORDER GRANTING CERTIFICATE OF AUTHORITY (JUNE 16, 1989); see also In the Matter of the Complaint by Airport Systems, Inc., Tonka Tools, Inc. and Country Village Spur Upon Refusal of Northwestern Bell Telephone Company to Allow Attachment of Customer-Owned Coin Operated Telephones, Docket No. P-421/C-82-4645, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (June 29, 1984).

In sum, both the legislature and the Commission are committed to exploring the potential benefits of competition and other innovative approaches to the delivery of telecommunications service consistent with protection of the general local ratepayers. The Commission's approach to CENTRON resale in this Order is consistent with that policy.

B. DETRIMENTS OF CENTRON RESALE

1. Adverse Effects Upon USWC

CENTRON resale does not appreciably increase the risk to USWC of service bypass, covers its long-run incremental cost, and provides more contribution than any other USWC service other than 1FB/1FH. Nevertheless, a single network access register (NAR) of resold CENTRON would replace approximately five 1FB/1FH lines and five 1FB/1FH lines produces almost twice as much revenue and more than twice as much contribution than would result from a sale of its resold CENTRON equivalent.

The impact on USWC of CENTRON resale at its current level of market penetration may be judged partially by USWC's reaction to it. In 1987-88, USWC was subject to a general rate proceeding, based on a 1986 test year. In the 1987 proceeding, about 40 percent of the current financial impact of CENTRON resale was recognized. USWC asked for no adjustments in its rates to

account for the effects of CENTRON resale. In 1989, with CENTRON penetration at its current level, USWC requested no adjustment either to earning levels or rate design to account for lost contribution from CENTRON resale. The Commission found no reason to believe that USWC's revenue requirement or existing rates were inappropriate. The Commission also notes that since 1989, USWC has consistently met its revenue requirement and has exceeded the threshold return on equity required for sharing profit with end-users under the Company's Incentive Plan approved by the Commission in its June 7, 1990 Order in Docket No. P-421/EI-89-860.

On the other hand, the Commission does not agree with ETI that its resale of CENTRON has had no detrimental effect upon USWC. It is clear that resale of CENTRON results in less net contribution than USWC would experience in the absence of CENTRON resale. The fact that at ETI's current level of penetration USWC still meets its revenue requirement and exceeds the return on equity sharing threshold does not eliminate that impact but simply places the size of the current impact in perspective. The fact remains that ETI's CENTRON resale prevents the Company from realizing the level of contribution that it would have realized in the absence of CENTRON resale. Because the dollar amount difference between USWC's current contribution and what it could realize in the absence of ETI's CENTRON resale occurs beyond the sharing threshold, this amount would have been divided between the Company and its ratepayers pursuant to the Incentive Plan sharing formula. As shown, then, CENTRON resale even at its current limited penetration level has negatively impacted the Company's profits and the ratepayer's share under the Incentive Plan.

Moreover, CENTRON resale has great potential for expanding its market penetration once approved by the Commission. With sufficient expansion, CENTRON resale could reduce USWC's contribution level below the sharing threshold under the Incentive Plan and, perhaps, even under its authorized rate of return. By so doing, CENTRON resale would not simply eliminate ratepayer sharing under the Incentive Plan but place significant upward pressure on rates.

Without need to adopt the methods and dollar figures of USWC or the Department, the Commission finds that the amount of detriment is significant and that the amount following approval of CENTRON resale will be even greater. The current and potential impact of CENTRON resale on USWC and its ratepayers must be taken into account in weighing the public necessity of CENTRON resale.

2. Adverse Impact Upon Commission Policy Goals

CENTRON resale's adverse impact on Commission policy goals is linked directly to its impact on USWC's contribution and, hence, its potential impact upon the rates and rate design. Significant expansion of CENTRON resale would create upward pressure on rates generally and undermine the 3 to 1 differential that the Commission has found appropriate for business and residential

rates. Also, to the extent that the CENTRON tariff represents Commission policy to maximize the amount of USWC's contribution from 1FB/1FH by limiting the availability of CENTRON to customers who had a competitive alternative (PSTS or stand-alone PBX service) the public policy objectives of the Commission are hampered by CENTRON resale.

3. Commission Evaluation and Public Interest Finding

The Commission finds that CENTRON resale clearly benefits a number of small and medium-sized business end-users that are 1) located in a building having a sufficient number of lines to make CENTRON discounts available and 2) situated close enough to USWC's central office so that the price differential between CENTRON and 1FB/1FH is adequate to make the price of resold CENTRON competitive with 1FB/1FH. CENTRON resale offers such customers a choice, provides system features beyond those available with 1FB/1FH service, and competes with PBX/PSTS service in some buildings.

The only significant detriment of CENTRON resale is its negative impact upon USWC's contribution levels and consequent threat to rates paid by USWC's ratepayers. USWC currently experiences some decrease in its contribution level due to CENTRON resale. That impact, of course, will increase with the substantial expansion of CENTRON resale which is likely to occur once CENTRON resale is authorized. Interference with the Commission's rate design policies cited previously is directly tied to this contribution loss. The Commission finds that this detriment can be neutralized by proper pricing changes in USWC's CENTRON tariff in conjunction with a comprehensive review of USWC's rates.

Based on a thorough examination of the record in this case, the Commission concludes that, if CENTRON resale is priced to remove the adverse consequences of CENTRON resale on USWC ratepayers and maintain USWC income neutral, it is in the public interest.

Four clarifications of the scope of the Commission's finding in this regard are necessary. First, the finding is based upon the understanding that any adverse impact of CENTRON resale on USWC and its ratepayers can and will be neutralized through adopting an appropriate price structure for USWC's CENTRON service. Second, due to the fact that the record in this case only contains data regarding resale of CENTRON in USWC exchanges, the public necessity finding is limited to the resale of CENTRON service in USWC exchanges. Third, the Commission's finding applies not only to a combined service offering such as ETI's (resold CENTRON plus auxiliary services) but also to pure CENTRON resale. The auxiliary services that ETI offers in conjunction with CENTRON resale augment the benefit of its CENTRON resale but are not essential to the Commission's finding that CENTRON resale is in the public interest. Fourth, this Order finds that CENTRON resale is in the public interest but does not grant ETI or any other CENTRON reseller authority to resell CENTRON. To obtain a permanent certificate of authority to resell CENTRON, ETI and any other CENTRON reseller desiring permanent authority to resell

CENTRON will be required to petition the Commission for that authority as required by Minn. Stat. § 237.16 (1990).

D. RATEMAKING ISSUES DEFERRED

The Commission's finding that CENTRON resale is in the public interest is predicated upon the understanding that a pricing plan for USWC's CENTRON service will be adopted that neutralizes any adverse impact of CENTRON resale upon USWC's customers. When such a pricing plan will be adopted is an issue. USWC requested that, if the Commission found CENTRON resale to be the public interest in this Order, it be allowed to recover the displaced contribution from ETI through a per line flat rate surcharge established in the same Order.

The Commission is committed to protecting USWC's ratepayers from any harm which may be caused by ETI's resale of CENTRON. However, based on the record in this case the Commission is not prepared to make a final determination regarding the specific dollar impact of ETI's CENTRON resale on USWC's contribution and how USWC's rate design should be altered in response to ETI's CENTRON resale. Piecemeal rate design is inappropriate. It is preferable to address these issues in the context of a comprehensive review of USWC's rates, e.g. USWC's next rate case or review of USWC's Incentive Plan. In such a proceeding, the issue will benefit from further development and the Commission can address USWC's rate design in a comprehensive manner.

In the meantime, any upward pressure that ETI's resale may be exerting on residually set rates can have no actual impact on those rates pending revision of those rates in the next incentive plan. In addition, any detriment that USWC may experience during this period due to ETI's resale of CENTRON is appropriately borne by USWC because it was USWC employees who were responsible for initially encouraging ETI to begin its resale of CENTRON and who did not alert the Commission to this activity as a problem in a timely manner.

IV. RESPONSIBILITIES OF A CENTRON RESELLER

A CENTRON reseller is a telephone company providing telephone service to the public. As such, it is subject to all statutes and Commission rules related to a telephone company of its size. If it has fewer than 30,000 customers, of course, it will be regulated as an independent telephone company. Minn. Stat. § 237.01, subd. 3 (1990). In general, a CENTRON reseller must receive a certificate of authority pursuant to Minn. Stat. § 237.16 (1990) prior to reselling CENTRON and upon receipt of such a certificate will be required to provide reasonably adequate service and facilities at reasonable rates. Minn. Stat. § 237.06 (1990).

A. REASONABLE RATES

Regarding rates, the local reseller's rates are subject to review by the Department and, ultimately, the Commission. If a CENTRON reseller has more than 30,000 customers, it will be subject to the rate change provisions of Minn.Stat. § 237.075 (1990) and other applicable sections. A reseller having fewer than 30,000 customers will not be required to obtain approval from the Commission before implementing a rate change but will be required to file a tariff or price list prior to implementing a new rate and its rates will be subject to Commission review and correction pursuant to Minn. Stat. §§ 237.06 and 237.081 (1990). The reseller's rate may not be unreasonable [Minn. Stat. § 237.06 (1990)], discriminatory [Minn. Stat. § 237.09 (1990)], or involve inappropriate cross-subsidization [Minn. Stat. § 237.06 (1990)].

B. REASONABLY ADEQUATE SERVICE

As to reasonably adequate service, local resellers have the same responsibilities to their end-users as the LEC has to its end-users and must comply with the service standards specified in Minn. Rules, parts 7810.5200 - 7810.5900. Resellers should not limit their customers' choice of toll provider by requiring them to subscribe to a particular toll provider in order to receive resold CENTRON nor should they physically block access to any toll provider serving in the area. Customers should be allowed to make long distance calls by dialing the access codes of the customer's preferred toll provider. Resellers should also ensure that their customers have the technical capability and information available to reach the 911 and 411 service providers as well as the local exchange operator. Direct access to the 911 emergency service provider should be without charge and end-users should be able to reach 411 or the operator by dialing 0 without incurring a charge greater than the cost of the service to the local reseller.

In addition, since the CENTRON reseller is a telephone company providing service to the public, it has a duty to provide the service upon request if it is technically capable of providing the service. Failure to do so would violate the non-discrimination requirements of Minn. Stat. § 237.09 (1990).

The CENTRON reseller should provide the same services to its customers regarding e.g. LEC directories and participation in the 911 system that a LEC is required to provide its customers. Of course, a CENTRON reseller attempting to disconnect service to a customer must comply with Minn. Rules, part 7810.1800 - 7810.2300 (1991).

C. OTHER RESPONSIBILITIES

1. Providing Information

In the course of their petitions for certificates of authority pursuant to Minn. Stat. § 237.16 (1990), CENTRON resellers will provide the Commission with the basic information necessary to

oversee their operation: their identity, their business address and phone number, responsible agent, the type of service provided, the location or locations where such service is provided, and the rates of service. Thereafter, the CENTRON reseller will make filings as required by Minn. Stat. § 237.07 (1990) and file an annual report as required by Minn. Stat. § 237.12 (1990).

2. Contributing to Various Telephone Funds

As a telephone company, the CENTRON reseller will be required to pay toward 1) the telephone assistance plan (TAP) pursuant to Minn. Stat. § 237.70, subd. 6 (1990), 2) the telecommunications access for the communications-impaired persons (TACIP) fund pursuant to Minn. Stat. § 237.52 (1990), and 3) the 911 fund pursuant to Minn. Stat. § 403.11 (1990). The CENTRON reseller is best viewed as a customer of the LEC for purposes of assigning costs on a trunk equivalency basis. The LEC will include a charge for these items in the rate at which it sells CENTRON to the reseller and place the amounts collected in the appropriate fund accounts.

V. USWC'S RESPONSIBILITIES AS A LEC TO CENTRON RESELLERS AND THEIR END-USERS

A. OBLIGATION TO PROVIDE SERVICE

USWC may not refuse to sell CENTRON to a party simply because that party intends to resell it. USWC is required to provide service to a CENTRON reseller at the demarcation point on the reseller's property thereby allowing access to its network for local service. Minn. Stat. § 237.12, subd. 2 (1990). Nor may USWC unreasonably delay in providing that service. Timeliness in providing the service is a quality of service issue subject to the Commission's review. USWC's has relevant time frame obligations under its General Exchange Tariff.

B. DISCONNECTION REQUIREMENTS

As to disconnection of CENTRON resellers, LECs are required to seek and obtain Commission approval before disconnecting service to the CENTRON reseller. Minn. Stat. § 237.12, subd. 2 (1990). See In the Matter of Three Petitions to Discontinue Service to Access Plus, Docket No. P-999/CI-92-1061, P-421/EM-92-999, P-3006/M-92-1032, P-478/EM-92-1031, ORDER PERMITTING DISCONTINUANCE OF SERVICE, REQUIRING 30-DAY WAIVER OF NONRECURRING CHARGES, AND REQUIRING ACCESS PLUS TO SHOW CAUSE (September 4, 1992).

C. OBLIGATION TO PROVIDE SERVICE

USWC may not decline to serve the customers of any reseller it has disconnected. USWC must provide service to all end-users within its service territory, including those former CENTRON resale customers subject only to payment for the tariffed services requested.

VI. PBX RESALE OF USWC'S LOCAL ACCESS SERVICE

PBX resale may be divided into three groups: PSTS, exempt entity PBX resale, and other PBX resale. As indicated previously, the first two categories have been authorized by the legislature. Minn. Stat. § 237.68 (1990) and Minn. Stat. § 237.067 (1991). The remaining category, "other PBX resale" is subject to a public interest determination in this Order. To understand the parameters of the "other PBX resale" category, it is helpful to understand the parameters of the first two PBX resale categories: PSTS and exempt entity PBX resale.

A. PRIVATE SHARED TELECOMMUNICATIONS SERVICE (PSTS)

PSTS is defined in Minn. Stat. § 237.68, subd. 1 (1990) as

...The provision of telephone services and equipment within a user group located in discrete private premises, in building complexes, campuses, or high-rise buildings, by a commercial shared service provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to long-distance telephone companies.

PSTS is provided through privately owned customer premises equipment and associated data processing and information processing and information management services within discrete customer premises located in a single building or building campus situation. The only existing technology that satisfies the statutory definition is a PBX. A PBX switch is an assembly of equipment which allows callers to communicate internally or with the public switched network by utilizing the switching capacity of a private switching system which is generally located on the end-user's premises. The statutory requirement that the service and equipment be provided "within a user group located in discrete private premises" indicates that a PSTS provider does not aggregate traffic from outside the "discrete private premises" served and must have at least one PBX switch on each such served premises.

B. EXEMPT ENTITY PBX RESALE

"Exempt entity PBX resale" has been fully delineated previously in this Order as on-site provision of telephone services by an establishment listed in Minn. Stat. § 237.067 (1991) to customers of that establishment using a PBX. The "establishments" listed in the statute are: an individual hotel, motel, restaurant, lodging house, boarding house, resort or place of refreshment licensed under chapter 157.

C. OTHER PBX RESALE

An example of "other" PBX resale would be the provision of local telephone service to two or more separate buildings that do not constitute a building complex, campus, or related high-rise

buildings (residential, business, or mixed-use) using a single PBX to serve access lines aggregated from these buildings. An example of PBX resale by an establishment listed in Minn. Stat. § 237.067 that would be outside the authority granted by that statute and hence "other" PBX resale would be the provision of local telephone service by the establishment by means of a PBX 1) to non-customers on-site or 2) to customers off-site. Hereafter, this Order will refer to all "other" PBX resale as PBX resale, for the sake of simplicity.

Minn. Stat. § 237.16, subd. 1 (1990) states in part:

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

The Commission has jurisdiction and authority to determine whether the public convenience requires authorization of PBX resale because the PBX switch used by PBX resellers to provide local telephone service to its customers is "equipment" within the meaning of that statute. In evaluating the public convenience and necessity of PBX resale, a new service, the Commission uses the same multi-factor test utilized in the Section III to evaluate CENTRON resale.

Applying the test to PBX resale on the basis of the record established in this matter can be accomplished in short order. On the positive side, authorizing additional varieties of PBX resale (e.g. allowing non-PSTS PBX resale in buildings that do not have enough station lines to justify a stand-alone PBX system would increase business opportunities for PBX resellers, increase customer choice, and provide service at a rate lower than USWC's 1FB/1FH service. Revenue received from the PBX reseller by USWC for the trunk line access to the local switched network recovers USWC's long-run incremental cost of providing that service. On the negative side, PBX service related revenue received by USWC provides a lower level of contribution to joint and common costs than 1FB/1FH business service (even lower than resold CENTRON service). PBX resale will also duplicate some LEC facilities stranding some LEC investment and displace some 1FB/1FH business service. Finally, there is no evidence in the record of additional, auxiliary or incidental services offered by PBX resellers that could serve to bolster the value of the service to customers.

In short, the parties to this matter agree and the Commission finds that there is insufficient evidence in the record to conclude that the public convenience requires varieties of PBX resale not previously approved by the legislature. Accordingly, the current general prohibition against any such PBX resale shall continue. The Commission will consider applications for authority to provide any such PBX resale on a case by case basis.

ORDER

1. The current prohibition against non-PSTS PBX resale is maintained.
2. CENTRON resale, whether or not provided with auxiliary or incidental services, is required by the public convenience and necessity in U S West Communications, Inc.'s (USWC's) exchanges provided that it does not produce adverse impacts on USWC's general ratepayers, i.e. that any contribution that it prevents USWC from experiencing is recovered from CENTRON resellers.
3. Quantification of the adverse impact upon ratepayers and selection of CENTRON rates adequate to neutralize that adverse impact is deferred for consideration in the first docket in which the Commission conducts a comprehensive review of USWC's rates, i.e. to a general rate case proceeding or to a proceeding reviewing a proposed Incentive Plan for the Company. USWC shall address any such loss in such docket.
4. Within 30 days of this Order, Enhanced Telecommunications, Inc. (ETI), which currently holds an interim certificate of authority to resell CENTRON, shall apply for a permanent certificate of authority pursuant to Minn. Stat. § 237.16 (1990). As part of its application, ETI shall include a tariff under which it proposes to resell CENTRON.
5. Any entity seeking authority to resell CENTRON in USWC's exchanges shall apply for a permanent certificate of authority pursuant to Minn. Stat. § 237.16 (1990).
6. As telephone companies, CENTRON resellers shall comply with all applicable statutes and Commission rules. CENTRON resellers with fewer than 30,000 customers shall comply with all statutes and Commission rules applicable to an independent telephone company. CENTRON resellers shall fulfill all the responsibilities that local exchange companies (LECs) or independent local exchange companies (ILECs) have toward their customers.
7. CENTRON resellers shall file and update their tariffs or price lists and change their tariffs or price list on a company by company basis in compliance with the statutes and rules applicable to a telephone company of their size.
8. USWC shall provide service to CENTRON resellers in accordance with the statutes and Commission rules, including the statutory requirement that it obtain Commission approval prior to terminating service to a CENTRON reseller, and upon request shall serve customers of any CENTRON resellers whose service it [USWC] terminates.

9. Within 30 days of this Order, USWC shall file a proposed tariff specific to CENTRON resale maintaining the same rates that it currently charges under its joint users' tariff. Once the Commission approves a tariff specific to CENTRON resale tariff, USWC shall cease using the joint users tariff with respect to CENTRON resellers.
10. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)