

P-999/CI-85-582; P-999/CI-87-697; P-999/CI-87-695 ORDER DENYING
PETITION AND RECONVENING the 697 STUDY COMMITTEE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
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In the Matter of a Summary
Investigation Into IntraLATA
Toll Access Compensation for
Local Exchange Carriers
Providing Telephone Service
Within the State of Minnesota

ISSUE DATE: March 30, 1993

DOCKET NO. P-999/CI-85-582

In the Matter of an
Investigation Into IntraLATA
Equal Access and Presubscription

DOCKET NO. P-999/CI-87-697

In the Matter of an
Investigation Into IntraLATA
Toll Access Compensation Plans

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ORDER DENYING PETITION AND
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COMMITTEE

PROCEDURAL HISTORY

I. Proceedings Leading to Commission Finding that Competition in the IntraLATA Market is in the Public Interest

The Modified Final Judgment (MFJ) entered in United States v. American Telephone & Telegraph Company, 552 F. Supp. (D.D.C. 1983), aff'd sub nom, Maryland v. United States, 102 S.Ct. 1240 (1983) directed divestiture of AT&T and set conditions for the operation of the component parts resulting from divestiture. The MFJ carved 7 Regional Bell Operating Companies (RBOCs) from pre-divestiture AT&T. An RBOC was allowed to serve as the local exchange company (LEC) in exchanges where pre-divestiture AT&T had served as the LEC. In addition, an RBOC was authorized to provide intraLATA toll service in all LATAs assigned to it.¹ RBOCs were

¹ A major mechanism for implementing the divestiture was the creation of local access and transport areas (LATAs). The LATAs were generally formed to encompass a standard metropolitan statistical area. Minnesota was divided into five LATAs: Minneapolis/St. Paul, St. Cloud, Rochester, Duluth, and Fargo-Moorhead.

prohibited from providing interLATA service.² The MFJ expressly left decisions on intrastate calling, and specifically intraLATA 1+ presubscription, which is the subject of this Order³, to state regulatory commissions.

On December 29, 1983, the Commission granted AT&T Communications of the Midwest's (AT&T/MW's) request for a certificate of authority to provide interLATA telephone service within the State of Minnesota but deferred AT&T/MW's request for intraLATA authority until it could determine the policy to be followed for competition in the intraLATA market. In the Matter of a Request by AT&T Communications of the Midwest for a Certificate of Authority to Provide InterLATA and IntraLATA Telecommunications Service in the State of Minnesota, Docket No. P-442/M-83-640 [*the 640 Docket*], ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND AUTHORITY (December 29, 1983), page 3.

On May 24, 1984, the Commission consolidated AT&T/MW's request to provide intraLATA toll service from *the 640 Docket* with three other petitions relating to the provision of intrastate telecommunications service into P-442, P-442, P-443, P-444, P-421, P-433/NA-84-212 [*the 212 Docket*]. The Commission identified three major issues to be resolved. One of the three major issues listed was whether competition in the intraLATA toll market was in the public interest. In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate InterCity Telecommunications Services Within the State of Minnesota, P-442, P-442, P-443, P-444, P-421, P-433/NA-84-212, ORDER FOR CONSOLIDATED HEARING (May 24, 1993), pages 3 and 4.

On October 15, 1985, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER in *the 212 Docket*. Among other things, the Commission found that allowing competition in the intraLATA market was in the public interest. The Commission authorized interexchange carriers (IXCs) to operate and compete within the intraLATA market. See FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (October 15, 1985) at pages 12, 25, and 27.

II. Proceedings Leading to Finding that 1+Presubscription Service is Necessary to Effective IntraLATA Toll Competition

On August 8, 1985, during the pendency of *the 212 Docket* but in anticipation of "the potential for significant changes in the provision of intraLATA toll service," the Commission initiated an

² U S West Communications, Inc. (USWC) is the RBOC providing toll service within (but not between) the five Minnesota LATAs.

³ IntraLATA 1+ presubscription is an arrangement whereby a customer can pre-select through the LEC an interexchange carrier (IXC) for handling their intraLATA calls dialed on a 1+/0+ basis.

investigation into the possible modification or replacement of the existing manner in which non-USWC local exchange carriers (LECs) were compensated for the costs they incurred in providing intrastate intraLATA toll access. In the Matter of a Summary Investigation Into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service Within the State of Minnesota, Docket No. P-999/CI-85-582 [*the 582 Docket*], ORDER INITIATING SUMMARY INVESTIGATION (August 8, 1985). Up to that point in the post-divestiture era, such compensation occurred pursuant to a non-tariff settlement procedure established in the Memorandum of Understanding (MOU). The MOU was an intraLATA toll access cost reimbursement agreement between LECs and the then sole provider of intraLATA toll service, USWC. The MOU was approved by the Commission February 7, 1984 and was scheduled to expire December 31, 1985. The "significant change" in the intraLATA market cited by the Order as the occasion for the 582 investigation was the emergence of IXCs competing with USWC for intraLATA toll service.

On December 31, 1985, the Commission issued its NOTICE FOR HEARING AND ORDER EXTENDING EXISTING COMPENSATION SYSTEM in *the 582 Docket*. In explaining the context of its investigation, the Commission stated:

...this investigation presents the Commission with the opportunity to reexamine the issue of how [LECs] will provide [IXCs] with access to the local network on an intrastate basis. Unlike the situation the Commission was faced with in its initial access charge investigation [Docket No. P-421/CI-83-203], the Commission now has two years of post-divestiture experience with toll access compensation plans to draw on for reference. The Commission has also resolved an important issue which was undecided at the time of the initial investigation: whether intrastate competition would be authorized for both intraLATA and interLATA toll traffic. Order at page 4. (Emphasis added).

In listing the issues to be resolved in the 582 Docket, the NOTICE FOR HEARING AND ORDER included the following issues:

Should the Commission require equal access in all local Minnesota telephone exchanges by a certain date? Should it grant exceptions; if so, on what basis? How should the costs of upgrades to provide equal access be recovered? Order at page 8.

On November 2, 1987, the Commission issued its FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER INITIATING SUMMARY INVESTIGATIONS in *the 582 Docket*. Addressing the equal access issue, the Commission found that intraLATA equal access presubscription is required for effective competition. Instead of directing the installation of equal access by a date certain, however, the Commission created a study committee to develop an implementation schedule and compensation mechanism for equal access presubscription statewide. Order at pages 42 and 62.

On January 11, 1988, the Commission issued its ORDER AFTER RECONSIDERATION in the 582 Docket. The Commission noted that NWB (now USWC) had requested in its petition for reconsideration that the Commission reserve its final decision on all 1-plus intraLATA presubscription and related issues until completion of the work of the 697 study committee and related Commission proceedings. The Commission denied the Company's petition, stating:

The November 2 Order, at page 42, clearly states the Commission's finding that intraLATA equal access presubscription is required for effective competition. Having made such a finding based on the record of this proceeding, it would be inappropriate for the [697] study committee to review that policy. The purpose of the study committee is properly limited to determining the economic and technical barriers that need to be overcome to achieve intraLATA equal access presubscription. Order at page 14. (Emphasis added.)

III. The Emergence of 1+ Presubscription in Certain ILECs via the MIEAC Proposal

On February 7, 1989, the Minnesota Independent Equal Access Corporation (MIEAC) filed with the Commission an application for a certificate of convenience and necessity to provide centralized equal access for both interLATA and intraLATA toll to participating independent LECs (ILECs). The matter was assigned to Docket No. P-3007/NA-89-76 (the 76 Docket).

On January 10, 1991, the Commission issued its ORDER GRANTING CERTIFICATE OF AUTHORITY TO PROVIDE EQUAL ACCESS SERVICE in the 76 Docket. The Commission noted that federal and state regulatory authorities have determined that competition between interexchange carriers (IXCs) for end user traffic will benefit end users, have supported the emergence of that competition, and realize that such competition can only result when end-users have a choice of IXCs to carry their toll traffic. After extensive analysis of MIEAC's proposal, the Commission found that MIEAC's provision of centralized equal access, as conditioned, was in the public interest.

IV. Status of Study Committees Created to Prepare for the Implementation of 1+ Presubscription

A. Intrastate IntraLATA Toll Access Compensation Study Committee

In its November 2, 1987 Order in the 582 Docket, the Commission found that the MOU (which by Commission Order had been continued beyond its original expiration date of December 31, 1985) should be replaced by a new intraLATA toll access compensation arrangement "...because the advent of toll competition in the intraLATA toll market makes it practical and reasonable to do so." Order at page 10. The Commission replaced the MOU with the Designated Carrier Plan (DCP) under which LEC compensation was

based on tariffed intrastate access rates during a two year transition period. Order at page 58.⁴ The Commission chose a transition arrangement because it found the record "...too limited to make any decision on a permanent compensation system." Order at page 18. Accordingly, the Commission established an Intrastate IntraLATA Toll Access Compensation Study Committee to study the subject in depth and assigned the matter to Docket No. P-999/CI-87-695 (*the 695 Docket*). Order at pages 18 and 61.

On September 14, 1990, the 695 Committee submitted its report.

B. The Equal Access and Presubscription Implementation Study Committee

In its November 2, 1987 Order in the 582 Docket, the Commission found that two practical problems impeded the implementation of intraLATA equal access presubscription and established the Equal Access and Presubscription Implementation Study Committee to address those problems. The Commission assigned the study to Docket No. P-999/CI-87-697.

On June 30, 1989, the 697 Committee filed its report.

C. The 696 and 698 Committees

In its November 2, 1987 Order in the 582 Docket, the Commission created two additional study dockets related to competition in the intraLATA market:

P-999/CI-87-696 to reflect an expanded focus upon the carrier common line charge (CCLC) recovery mechanism for the telephone industry in Minnesota; and

P-999/CI-87-698 to study the use of access tariffs to bill jointly provided private line service to customers.

V. Commission Decision Regarding the Order in Which it Would Consider the Various 1+ Presubscription Related Dockets

On July 10, 1990, the Commission issued a Notice indicating the order in which it intended to consider

1. the 76 Docket (the MIEAC Application Docket);
2. the 695 Docket (the study committee regarding intrastate intraLATA toll access compensation); and
3. the 697 Docket (the study committee convened to recommend an implementation schedule and a compensation mechanism for equal access presubscription statewide).

⁴ The two year transition period has been extended on several occasions. The DCP will continue in effect until further Order of the Commission. Docket 582, ORDER EXTENDING DESIGNATED CARRIER PLAN (December 21, 1990), page 2.

In its Notice, the Commission stated that due to the inter-relatedness of the three dockets, it would decide the 76 Docket first, then the 697 Docket, then the 695 Docket. The Commission provided that initial comments in the 695 Docket would be due 30 days after the Commission issued its Order in the 697 Docket with reply comments due 20 days after the initial comments were filed.

On January 30, 1992, the Commission issued its ORDER SETTING INTERIM RATES AND ESTABLISHING PROCEDURE TO SET FINAL RATES in the 76 Docket, thereby reaching a concluding point in that docket within the meaning of the Commission's July 10, 1990 Notice.

VI. USWC's Petition for Further Proceedings in the 582, 695, and 697 Dockets

On September 15, 1992, USWC filed a petition requesting further proceedings to determine whether the implementation of intraLATA 1+ presubscription in Minnesota is in the public interest.

On September 28, 1992, the Commission issued a Notice requesting comment from interested parties regarding USWC's September 28, 1992 petition for further proceedings.

On October 12, 1992, comments regarding USWC's September 28, 1992 petition for further proceedings were filed by the Department, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), MCI, the Minnesota Independent Coalition (MIC), AT&T/MW, and United, GTE and Vista Telephone Companies.

On October 22, 1992 reply comments were filed by USWC, the Department, MCI, MIC, and United. Allnet filed reply comments on October 27, 1992.

On March 9, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

VII. USWC's Petition

USWC has petitioned for further proceedings to determine whether the implementation of intraLATA 1+ presubscription in Minnesota is in the public interest. USWC argued in its petition that the Commission's November 2, 1987 Order in the 582 Docket left open the ultimate question of whether 1+ should be implemented in Minnesota. USWC stated that analysis of the Order shows that the Commission announced a competitive goal rather than a directive to implement intraLATA 1+ presubscription.⁵

⁵ USWC was supported in this position by GTE, the Department, and the RUD-OAG.

The MIC, United, MCI and Allnet opposed USWC's petition. These parties argued that in its November 2, 1987 Order the Commission ordered the implementation of 1+ presubscription and left only the administrative details (how) and implementation schedule (when) to be worked out.⁶

VIII. Commission Analysis

There will clearly be further proceedings in this matter. The conditions precedent to competition in the intraLATA toll market have not yet been fully established and the Commission remains persuaded, to date, that further efforts to establish those conditions are appropriate. The question is what will be the scope of those proceedings (what issues are on the table) and what level of formality will they take (study group process or contested case hearing). USWC's petition gives the Commission an opportunity to review the status of its decision-making with respect to intraLATA competition in general and 1+ presubscription in particular.

In the earlier 212 docket, the Commission found that competition in the intraLATA toll market in Minnesota was in the public interest. In an Order issued October 15, 1985, the Commission stated:

For these reasons, the Commission thus finds that allowing competition in the intraLATA market...is in the public interest.⁷

And elsewhere in that Order, the Commission stated:

...the Commission has determined in this proceeding that competition [in the intraLATA market as well as the interLATA market] is in the public interest and finds that the public interest and public hearing requirements of Minn. Stat. § 237.16, subd. 1 are satisfied by this proceeding.

Prior to its finding in the 212 Docket that competition in the intraLATA toll market was in the public interest, the Commission had already initiated an investigation into intraLATA toll access compensation arrangements, a topic of relevance in converting to a competitive intraLATA toll environment. P-999/CI-85-582. Indeed, the express purpose of the 582 investigation was to examine and evaluate alternatives to the existing system of intrastate intraLATA toll compensation under the MOU and "...address the need

⁶ This position was generally supported by AT&T.

⁷ In the Matter of a Consolidated Proceeding to Investigate the Provision of Intrastate InterCity Telecommunications Services Within the State of Minnesota, P-442, P-442, P-443, P-444, P-421, P-433/NA-84-212, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (October 15, 1985) at page 12.

for a toll access system to complement a potentially competitive toll environment statewide, within and between LATAs."⁸

After the Commission found in the 212 Docket that competition in the intraLATA toll market was in the public interest, it has consistently sought to develop a regulatory environment that would achieve the benefits of that competition. The most obvious problem, of course, was the absence of competitors in the intraLATA toll market and a network configuration inimical to the emergence of such competitors. Due to the technology of their end offices, local exchange companies (LECs) had historically restricted access to only one IXC (AT&T) for interLATA traffic and one IXC (USWC) for intraLATA traffic. Following the MFJ, USWC had begun converting its central offices to interLATA equal access presubscription. However, even in exchanges with such updated equipment, a customer could use an alternative IXC for an intraLATA toll call only through a cumbersome dialing process. Each time a customer wants to use an alternative carrier for an intraLATA toll call, he or she has to dial 10, then the alternative ICX's three digit code number, then the regular seven digit number. Compared to what a customer has to dial to have USWC carry a similar call (1 plus the seven digit number), this procedure put alternative IXCs at a distinct competitive disadvantage. The Commission realized that the unequal dialing requirements between USWC and the alternative IXCs was a substantial barrier to effective competition in the intraLATA toll market.

Accordingly, as part of its investigation in the 582 Docket, the Commission explored whether the Commission should require local Minnesota telephone exchanges to install technology that would provide alternative IXCs with intraLATA "equal access"⁹ to the local network by a certain date.¹⁰

⁸ In the Matter of a Summary Investigation Into IntraLATA Toll Access Compensation for Local Exchange Carriers Providing Telephone Service Within the State of Minnesota, P-999/CI-85-582, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND ORDER INITIATING SUMMARY INVESTIGATIONS (November 2, 1987), page 9.

⁹ The term "equal access" refers to access arrangements that provide competing IXCs with access to the local network equal in kind and quality to those available to the dominant IXC (USWC in the intraLATA market and AT&T in the interLATA market. In other words, a customer would be able to notify the LEC of the IXC carrier of his or her choice and thereafter make toll calls carried by that IXC simply by dialing 1 plus the called party's seven or ten digit number. The technology that a LEC would need to direct a customer's call to the presubscribed carrier is called 1+ presubscription technology. The kind of toll service that a LEC offers by using that technology is referred to as "1+ presubscription service."

¹⁰ 582 Proceeding, NOTICE AND ORDER FOR HEARING (December 31, 1985), at page 8.

In its subsequent November 2, 1987 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND ORDER INITIATING SUMMARY INVESTIGATIONS in the 582 Docket, the Commission maintained its commitment to seeking the benefits of competition. The Commission adopted a policy favoring the establishment of equal dialing features between USWC and its IXC competitors.¹¹ The Commission stated clearly that intraLATA equal access presubscription was required for effective competition and indicated that only two practical barriers had to be overcome before it would be ordered.

The two problems identified by the Commission were: 1) the unavailability of technology which would allow for the provision of the service at a reasonable cost and 2) that the Commission had not yet established a method to pay for the development and installation of the service. The Commission viewed these as practical problems that could be overcome. When these problems were overcome to the Commission's satisfaction, the Commission would order that 1+ presubscription service be provided.

To address these two practical impediments to the availability of 1+ presubscription service, the Commission established an Equal Access and Presubscription Implementation Study Committee. The Commission stated:

The task of this group will be to recommend an implementation schedule and a compensation mechanism for equal access presubscription statewide. This study group will not address the policy of whether equal access presubscription should be provided, but rather should address itself to how the technical and economic barriers to equal access can be overcome.

In its petition for reconsideration of the Commission's November 2, 1987 Order, NWB requested that the Commission reserve its final decision on all 1+ intraLATA presubscription issues until completion of the work of the Equal Access and Presubscription Implementation Study Committee (the 697 Committee). The Commission denied NWB's request. The Commission understood NWB's request as an invitation to expand the 697 Committee's purpose to revisit the final policy decision that it had made in the November 2, 1987 Order: that 1+ intraLATA presubscription should be implemented. The Commission stated that it would be inappropriate for the committee to review that policy. 582 Proceeding, ORDER AFTER RECONSIDERATION (January 11, 1988), page 14.

¹¹ NWB (now USWC) clearly understood that what was at issue was whether the Commission would order the implementation of 1+ presubscription at that time. NWB had argued that the Commission should not require intraLATA presubscription until after the LATA restrictions on NWB were removed. NWB claimed, as USWC does now, that if intraLATA presubscription was ordered, it would lose most of its intraLATA toll business and the resulting contribution with the inevitable result being increased pressure to raise local rates.

From a review of these Orders, then, it is clear that the Commission has found that 1+ presubscription is in the public interest and should be implemented but has not ordered a specific implementation date or timetable for that service. In creating a study committee to examine how practical impediments could be overcome and to recommend a timetable for implementing the service, however, the Commission was directing the committee participants to proceed with their work thoroughly and expeditiously. In short, the Commission has adopted and never deviated from its policy of promoting competition in the intraLATA toll market by preparing for the implementation of 1+ presubscription service. The Commission has determined that 1+ presubscription is in the public interest and will be ordered as soon as the Commission determines that the practical impediments to implementation have been removed.

The Commission decisions thus summarized provide the framework for proceeding in a responsible manner in this matter and need not be revisited.

IX. Commission Action

The Commission finds that it has answered the question whether 1+ intraLATA presubscription should be implemented (whether this service is in the public interest) in the affirmative. The Commission also notes that it has not adopted an implementation timetable for the service and will do so only after two practical problems identified in the November 2, 1987 Order have been resolved to its satisfaction. The remaining questions in this matter are: how and when 1+ presubscription service will be ordered.

USWC's request for an expedited proceeding under Minn. Stat. § 237.61 (1992) on this matter will be denied. Such an expedited process is only available if all parties agree to it and it appears that the requisite agreement among the parties is not present.

USWC's alternative request for a contested case proceeding will also be denied. It is not clear to the Commission on the basis of the record to date what, if any, material facts are in dispute between the parties regarding the remaining issues in this matter. Nor is it clear that the study committee process established in the November 2, 1987 Order and redirected in this Order will be unable to establish an adequate record to resolve the remaining questions in this matter: how and when 1+ presubscription service will be ordered.

To pursue resolution of those practical concerns, the Commission will reactivate relevant committees created in the November 2, 1987 Order with the restated aim of providing an adequate record for resolving those problems. Following the filing of updated information by the Committee and a period to receive comments from interested parties, the Commission will meet to consider the Committee's Report and determine to what extent the practical impediments to implementation of 1+ presubscription

have been resolved. The process is not open to the broader question whether 1+ presubscription is in the public interest. As previously shown, that question has been decided earlier in these proceedings.

X. Future Consideration of the Committee Reports Initiated in the 582 Docket

After it considers the additional filings regarding the 697 Study Committee Report that have been authorized in this Order, the Commission will issue an Order regarding that report. As indicated in the Commission's July 10, 1990 Notice, that Order will, among other things, authorize a 30-day comment/20 day reply comment period regarding the report of the 695 Study Committee, the Intrastate IntraLATA Toll Access Compensation Study Committee.

ORDER

1. U S West Communications, Inc.'s (USWC's) Petition for Further Proceedings filed September 15, 1992 is denied. Specifically, USWC's request for an expedited hearing pursuant to Minn. Stat. § 237.61 (1992) or, in the alternative, a contested case proceeding, is denied.
2. The Equal Access and Presubscription Implementation Committee (the 697 Committee) created in the Commission's November 2, 1987 Order in the 582 Docket and assigned to Docket No. P-999/CI-87-697 shall reconvene for the purpose of updating the cost and availability information in the report it submitted on June 30, 1989. The committee shall update the information in the most expedient manner possible while ensuring accuracy of the information.
3. Within 60 days of this Order, the 697 Committee shall submit the updated information compiled pursuant to Ordering Paragraph 2.
4. Interested parties shall have 20 days following the filing of the 697 Committee's updated information to file comments.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)