

P-999/CI-92-523 ORDER DETERMINING STATUS OF FAX SERVICES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of a Commission  
Initiated Investigation into the  
Provision of Fax Services to the  
Public for Hire

ISSUE DATE: April 7, 1993

DOCKET NO. P-999/CI-92-523

ORDER DETERMINING STATUS OF FAX  
SERVICES

**PROCEDURAL HISTORY**

On February 11, 1992, Man-U-Fax-Sure filed an application for Commission authority to provide both traditional pay telephone service and pay fax services over self-service machines designed to perform both functions. Man-U-Fax-Sure's request presented for the first time the question of Commission jurisdiction over pay fax services.

On June 26, 1992, the Commission issued an Order granting Man-U-Fax-Sure interim authority to provide pay fax and pay telephone services, and an ORDER INITIATING GENERIC INVESTIGATION INTO FAX FOR HIRE, opening the current investigatory docket. In the latter Order, the Commission directed the investigation to the scope of its jurisdiction over fax services, and the extent of any necessary regulation of such services. The Commission ordered the Department of Public Service (the Department) to submit a report and recommendation within 60 days of the Order date.

On September 14, 1992, the Commission issued its ORDER GRANTING TIME EXTENSION, allowing the Department an additional 30 days in which to submit its report.

On October 14, 1992, the Department filed its report and recommendation.

On December 4, 1992, the Commission issued a notice soliciting comments on the Department's report. The following parties filed responsive comments: US WEST Communications, Inc. (US WEST); the Minnesota Independent Payphone Association (MIPA); Alexander Telecommunications Companies, Inc. (Alexander); Teleticket Airport Business Center (Teleticket); and AT&T.

The matter came before the Commission on March 9, 1993, and March 30, 1993.

## **FINDINGS AND CONCLUSIONS**

### **I. Factual Background**

Pay fax services are currently provided under two different methods. The more common system is the provision of fax services to the public on an over-the-counter basis. Under this method, the fax customer pays the operator/owner of the fax machine, who faxes the document on the customer's behalf. This method of fax service is currently readily available in printing and photocopying shops, hotels, motels, and business and secretarial outlets.

The second method of pay fax service is an automated stand-alone fax machine or system. Under this method, the fax customer prepays for the fax service by means of a credit card or a telephone calling card. Some stand-alone fax machines offer nothing but fax transmission; other fax machines combine fax service with pay telephone service. Pay telephone equipment used with pay fax service is of two types. Some pay telephone equipment is independent of the use of the fax equipment, can be used to complete standard, non fax-related local and long distance calls, and generates a charge which is separate from the fax component. The other type of pay telephone equipment can be used only in conjunction with the fax machine and does not generate a separate charge.

### **II. Comments of the Parties**

#### The Department

In its report, the Department stated that fax services do not constitute telephone services under Minn. Stat. § 237.01, subd. 2 (1992). For this reason, the Department stated that the Commission should not assert jurisdiction over the services. The Department supported this position by citing Minnesota Microwave, Inc. v. Public Service Commission, 190 N.W.2d 661 (Minn. 1971). In that case the Minnesota Supreme Court defined telephone service as "the supplying of facilities for two-way communication." If this definition is applied to pay fax services, which involve one-way communication, fax services fall outside the scope of telephone service.

The Department also said that a high level of competition already exists among fax service providers. In this type of competitive environment, it does not seem imperative to place the service under Commission regulation.

The Department stated further that the Commission should continue to apply all existing rules and precedent developed for pay telephones to the pay telephone component of fax services. The Department cited Commission pay telephone requirements created in

Docket No. P-421/C-82-4645 (Order of June 29, 1984); Docket No. P-999/C-87-145 (Order of August 6, 1988); and Docket No. P-999/CI-88-917 (Orders of November 19, 1991 and March 25, 1992).

Finally, the Department stated that if the Commission asserts jurisdiction over pay fax services, the Commission should apply the existing pay telephone service requirements to those services.

### The Other Parties

US WEST, AT&T, MIPA, Alexander and TeletICKET supported the Department's position that fax services are not telephone services and are therefore not under Commission jurisdiction. AT&T also requested certain clarifications of the points raised by the Department. AT&T requested clarification that the telephone component of a stand-alone fax machine is not automatically subject to Commission jurisdiction, and that the fax component of a fax machine which includes a pay telephone is not under Commission jurisdiction.

At the March 9, 1993 meeting, a representative of US WEST stated for the first time that US WEST is unsure of the tariff to apply to public fax service providers. This issue will be dealt with later in this Order.

### **III. Commission Analysis**

The Commission agrees with the Department and the other commenting parties that pay fax transmission services are not telephone services and are thus not subject to Commission jurisdiction. In Minnesota Microwave, the Minnesota Supreme Court examined federal opinions and decisions from other states and decided that telephone service is limited to "two-way communication." This limitation is necessary in order to avoid an overbroad interpretation of telephone service which would, for example, include the use of transmission wires for commercial broadcasting of radio and television. Confining telephone service to the provision of "two-way communication" is a distinction which goes to the heart of telephone service. It is an appropriate and useful definition which has been consistently employed by the Commission in its deliberations.

The Commission therefore finds that fax transmissions are not telephone services and are thus not subject to Commission jurisdiction.

Having found that fax transmissions are not telephone services, the Commission must next examine the pay telephone component of some pay fax services. Here, the essential determination is if the pay telephone element is used to provide two-way telephone service, for which a separate charge is applied. If the pay telephone component can be used in this manner, independently of

the fax component, it is within the meaning of telephone service as defined in Minnesota Microwave. If, on the other hand, the pay telephone element attached to the pay fax system can be used only in conjunction with the fax machine<sup>1</sup>, and no separate charge is exacted for it, the pay telephone component is not telephone service. No two-way communication is accomplished or assisted by means of this type of pay telephone service; the pay telephone element is not telephone service subject to Commission regulation.

The Commission thus finds that use of pay telephone equipment which is attached to a stand-alone fax machine and which can be substantially and independently used to complete two-way telephone communication, for which a separate charge is levied, is telephone service subject to Commission jurisdiction. Such service is subject to all the rules, regulations and Commission precedent which pertain to pay telephone service. Use of pay telephone equipment which is attached to a stand-alone fax machine and which can only be used in conjunction with it, for which no separate charge is applied, is not telephone service.

#### **IV. The Applicable US WEST Tariff**

At the March 9, 1993 meeting, the representative of US WEST stated for the first time that US WEST is unsure of the tariff to apply to public fax service providers. US WEST asked for Commission direction.

The Commission finds that the issue of the proper tariff to apply to pay fax providers is outside the scope of this proceeding. This investigation was conducted in order to explore two issues: the scope of Commission jurisdiction over pay fax services; and the extent of any necessary regulation of such services. The proper tariff to apply is beyond the scope of these issues.

If US WEST or any other LEC wishes to determine the proper tariff to apply to fax providers, the company should file for clarification or submit a new tariff proposal to the Commission in a separate proceeding.

#### **ORDER**

1. Fax transmissions are not telephone services and are thus not subject to Commission jurisdiction.

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<sup>1</sup> In some pay fax systems, a pay telephone component is used solely to complete the fax transmission.

2. Use of pay telephone equipment which is attached to a stand-alone fax machine and which can be substantially and independently used to complete two-way telephone communication, for which a separate charge is applied, is telephone service subject to Commission jurisdiction. Such service is subject to all the rules, regulations and Commission precedent which pertain to pay telephone service.
3. Use of pay telephone equipment which is attached to a stand-alone fax machine and which can only be used in conjunction with it, for which no separate charge is applied, is not telephone service.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster  
Executive Secretary

(S E A L)