

P-421/EM-91-873 ORDER REQUIRING REFILED PRICE LISTS, COST STUDY, AND REPORT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of Automatic Number
Identification for Basic 911 and Introduction of
Customer Records Service

ISSUE DATE: June 13, 1994

DOCKET NO. P-421/EM-91-873

ORDER REQUIRING REFILED PRICE
LISTS, COST STUDY, AND REPORT

PROCEDURAL HISTORY

On November 6, 1991, U S West Communications, Inc. (USWC) filed price lists for two optional features offered to augment Basic 911 Emergency Service: Automatic Number Identification (ANI) and Subscriber Records. The revisions were to become effective December 6, 1992. The matter was assigned to this docket, P-421/EM-91-873.

On December 5, 1991, USWC advised the Commission that it would delay implementation of the changes so that customer suggested modifications could be incorporated.

On November 12, 1992, the Company filed revised price lists for those features, along with revised revenue and cost information.
The revisions went into effect December 12, 1992.

On January 31, 1994, the Minnesota Department of Public Service (the Department) filed its Report regarding the Company's November 12, 1992 filing in this docket and regarding two other 911 filings by the Company: a proposal to restructure its Enhanced 911 Service - E911 (Docket No. P-421/EM-93-233) and a proposal to introduce a service to determine the station from which a 911 call was made when the station is served by a private switch (Docket No. P-421/EM-92-341).¹

On February 11, 1994, USWC filed its response to the Department's January 31, 1994 Report.

On March 15, 1994, the Department filed responsive comments.

On March 16, 1994, USWC filed a supplemental reply.

On March 23, 1994, James Brekken, Executive Director of the Metropolitan 911 Telephone Board (Metro 911 Board) filed a letter commenting on USWC's March 16, 1994 supplemental reply.

¹ The Commission has issued separate Orders in these dockets. See In the Matter of Automatic Number Identification for Enhanced 911 and Introduction of Customer Records Service, Docket No. P-421/EM-93-233, ORDER REJECTING PROPOSED TARIFF (June 13, 1994) and In the Matter of the Introduction of Private Switch/Automatic Location Identification Service, Docket No. P-421/EM-92-341, ORDER REQUIRING REFILED PRICE LISTS AND APPROVING LIMITATION OF LIABILITY AND INDEMNIFICATION LANGUAGE (June 13, 1994).

On May 18, 1994, the Metro 911 Board filed a letter commenting on a memo prepared by Commission Counsel regarding the Commission's authority to provide for limitation of utility liability and indemnification.

On May 24, 1994, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Background

The core of the 911 service system in USWC-served territory is the Company's Basic 911 Service (B911) which simply sends 911 call to a Public safety Answering Point (PSAP). PSAPs include city police departments, county sheriffs' offices and emergency services dispatch centers. The Company's B911 comes with two standard features for which there is no additional charge: "forced disconnect" which allows the PSAP attendant to release a connected call even though the connected party has not hung up and "idle tone application" by which the PSAP attendant hears a distinct tone if the caller terminates a 911 call before it is answered.

The Company's November 12, 1992 filing presented revised price lists for two options to enhance the 911 system:

- automatic number identification (ANI): this feature displays the number of the telephone used to dial 911 at the PSAP at the time the call is answered; and
- subscriber records (SR): the Company provides subscribers' names, service addresses, and telephone numbers to a 911 customer to assist the customer to create and maintain a data base that will be used in dispatching public safety agencies.

B. Pricing Issues

The Department identified some elements of the Company's filing that, in its opinion, warranted clarification. In addition, the Department stated that the Company's requirements regarding the receipt of customer updates and the format of the data sent was not conducive to the efficient operation of many PSAPs, especially the smaller ones. The Company generally agreed to make the changes recommended by the Department.

Having reviewed the Department's report and the Company's reply, the Commission finds that the Department's pricing issues recommendations are appropriate and will adopt them. In brief, the Commission will require the filing of an amended price list within 10 days of this Order and require a 30 day report regarding ANI problems reportedly being encountered in connection with B911 service to Cloquet. The Commission will close the docket upon compliance. See particulars in the Ordering Paragraphs. Finally, the Commission will require USWC to make a new filing that includes cost studies and new proposed rates. Consideration of that filing will be assigned a new docket.

C. Liability Statement

As part of its proposed tariff, USWC included a paragraph which sought to limit the Company's liability in the provision of B911 service under *any* circumstances to \$50.00 or an amount equivalent to the pro rata charges for the service affected during the period of time that the service was fully or partially inoperative.

The Department noted that the proposed language was quite broad and would limit the utility's liability for gross negligence or intentional acts. The Department argued that legal precedent suggests that tariffs which purport to relieve a utility from liability under such circumstances (gross negligence or willful or wanton acts) will likely be found to violate public policy. The Department recommended that USWC be allowed to limit its liability only for ordinary negligence, not for gross negligence or intentional acts.

Commission Analysis and Action

In exercise of its authority to set just and reasonable rates of telephone companies, the Commission has reviewed the Company's proposed limitation on liability and found that it is excessive. The Commission specifically rejects the portion of the proposal which purports to limit the Company's liability in circumstances where it has acted intentionally or with gross negligence.

The Commission, however, will approve the following amended tariff language limiting the Company's liability in connection with its B911 service:

The Company's liability for any loss or damage arising from errors, interruptions, defects, failures, or malfunctions of this service or any part thereof ~~whether~~ caused by the negligence of the Company ~~or otherwise~~ shall not exceed the greater of \$50.00 or an amount equivalent to the pro rata charges for the service affected during the period of time that the service was fully or partially inoperative. These limited damages shall be in addition to any credit which may be given for an out-of-service condition as specified in the General Rules and Regulations.²

² The editing marks indicate the changes the Commission is making in the language originally proposed by the Company.

D. Indemnification Clauses

The Company-proposed tariff contains two indemnification clauses. Indemnification differs from limitation of liability in that it does not block recovery by an injured party but shifts the burden of defending against damage claims and paying any damages awarded the injured party.

The Company's first indemnification clause requires the customer to agree to indemnify USWC from claims due to the customer's acts or omissions. The second paragraph is more specific in its focus; it requires the B911 customer to indemnify the Company for any invasion of privacy caused or alleged to be caused by the customer's use of the B911 service.

The Department and the Metro 911 Board objected that the paragraphs were one-sided in that they provided indemnification of the Company from acts of customers but did not indemnify customers for acts of the Company. The parties argued that reciprocal language was required in order for indemnification to be fair.

Commission Analysis

Provision of 911 service is a high risk public service. The Commission, as the regulator of telephone service in the state, appropriately examines what risks the utility and its rate payers should assume with respect to that activity. The justification for allowing the Company to switch the burden of responding to law suits resulting from the negligence of an individual customer to that customer stands alone and does not require reciprocal indemnification of customers for its validity. The justification for indemnifying the Company is to facilitate equity in the provision of 911 service by limiting the risks that the utility and its ratepayers will be required to assume in the provision of this important public service.

The rationale for requiring the utility to indemnify the customer, on the other hand, is much less compelling. The Department and the Metro 199 Board advanced no argument other than that "reciprocity" required it. However, the public interest status of the utility (and its ratepayers) vis a vis the service is different enough from that of a 911 customer that a simple claim for reciprocity is unavailing.

Commission Action

Accordingly, the Commission will approve the Company's proposed indemnification clauses as proposed. In so doing, the Commission clarifies that the Company will be indemnified only for the acts of the 911 customer, not for acts of its own employees.

Finally, the Metro 911 Board expressed concern about language in a memo from the Commission Counsel which, according to the Board, could be interpreted as referring to counties as the sole customers of the Company's B911 service. The Board pointed out that other units of government also contract and pay for 911 service. The Board wished the issue of who is the "customer" of the 911 service to be left open at this time. The Commission agrees generally that the issue may bear further development and trusts that it will be so

developed in a proceeding where that issue is relevant to what the Commission is called to decide. In the meantime, the Commission clarifies that nothing in this Order speaks definitively on that issue.

ORDER

1. Within 10 days of this Order, USWC shall file new price lists for automatic number identification (ANI) and subscriber records (SR) which
 - a. add an explanation of which telephone numbers are included in the count;
 - b. clarify the customer records price list to explain whether both PSAPs must pay the full non-recurring and monthly prices when an exchange is served by two PSAPs;
 - c. modify the customer records price list to indicate that the records update will be at a mutually agreeable time; and
 - d. include limitation of liability and indemnity clause language as approved in Ordering Paragraphs 6 and 7 of this Order.
2. Within 30 days of this Order, USWC shall file a status report on any problems associated with B911 service to Cloquet. St. Louis County is hereby specifically invited to comment on this filing.
3. Upon receipt of satisfactory filings pursuant to Ordering Paragraphs 1 and 2, this docket (P-421/EM-91-873) will be closed.
4. The Commission hereby refers to Docket No. P-421/EM-89-694 the issue of what classification (competitive or non-competitive) ANI for B911 should have.
5. Within 90 days of this Order, USWC shall make a filing with respect to the other aspects of the B911 filing. The 90 day filing shall
 - a. modify the prices for subscriber records so that records can be offered on a per telephone number basis rather than on a per 1000 telephone number basis;
 - b. includes an up-to-date cost study for the customer records service which includes a non-recurring charge study examining the costs of supplying records to one PSAP and multiple PSAPs;
 - c. provides alternative methods, frequency and format for the updates under the customer records format; and
 - d. report that the Company has met with affected customers (either individually or in the 911 study group), state the efforts of USWC to address the needs of customers and demonstrate that it is addressing their concerns as well as possible.
6. The following limitation of liability language is approved:

The Company's liability for any loss or damage arising from errors, interruptions, defects, failures, or malfunctions of this service or any part thereof caused by the negligence of the Company shall not exceed the greater of \$50.00 or an amount equivalent to the pro rata charges for the service affected during the period of time that the service was fully or partially inoperative. These limited damages shall be in addition to any credit which may be given for an out-of-service condition as specified in

the General Rules and Regulations.

7. The following indemnification clause language is approved:

The B911 customer agrees to release, indemnify, defend and save harmless the Company from claims, suits, actions, damages, costs, judgments and actions of every name and description arising out of or due to acts or omissions of the B911 Customer, its agents and its employees while answering and dispatching 911 calls.

The B911 customer agrees to indemnify and hold harmless the Company for any infringement or invasion of the right of privacy of person or persons, caused or claimed to be caused by the acts or omissions of the customer and their operation or use of the E911 service.

8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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