

P-421/EM-92-341 ORDER REQUIRING REFILED PRICE LISTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Introduction of Private
Switch/Automatic Location Identification
Service

ISSUE DATE: June 13, 1994

DOCKET NO. P-421/EM-92-341

ORDER REQUIRING REFILED PRICE
LISTS

PROCEDURAL HISTORY

On April 30, 1993, U S West Communications, Inc. (USWC) filed a price list for Private Switch/Automatic Location Identification (PS/ALI), a service to determine the station from which a 911 call was made when the station is served by a private switch. USWC stated that it intended to place the price list for PS/ALI into effect ten days after the filing, May 10, 1993.

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 provide automatic number identification and subscriber records in conjunction with Basic 911 Emergency Service - B911 (Docket No. P-421/EM-91-873).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.

On May 18, 1994, the Metro 911 Board filed a letter commenting on a memo prepared by

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 Automatic Number Identification for Basic 911 and Introduction of Customer Records Service, Docket No. P-421/EM-91-873, ORDER REQUIRING REFILED PRICE LISTS, COST OF MONEY STUDY AND REPORT (June 13, 1994).

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

One of the most important elements of USWC's Enhanced Universal Emergency Number Service (E911) is automatic location information (ALI). ALI informs the Public Safety Answering Point (PSAP) of the 911 caller's name and address. In cases where the 911 caller is unable to provide this information, for whatever reason, ALI furnishes this information instantaneously, thereby facilitating the PSAP to respond appropriately.

As currently offered, however, regular ALI is unable to provide this information for lines serviced by a customer-owned Private Branch Exchange (PBX). The only address furnished via ALI when any PBX-served caller dials 911 is the main listed address of the PBX customer. This listed address, of course, is not necessarily the location of the calling party. For off-premise extensions, the calling party may be located miles away from the main listed address.

Private Switch ALI was designed as a service to enable the PBX owner (the customer of the service) to overcome that inadequacy and ensure that location information on the persons they serve will be immediately available to the PSAP when they dial 911. Under the PS/ALI arrangement, the PBX owner sends location information to the Company at regular intervals. The Company then assigns each PBX-served station/telephone a station code and forwards those codes and their corresponding locations to the PSAP in a form that allows the PSAP to "recognize" that code when a PBX-served person calls 911 and immediately know the caller's location.

B. Pricing Issues

The Company's Private Switch ALI proposal presents four issues of concern that warrant discussion:

1. Pricing Increments

The Company proposed to price the service on a per 1000 telephone number basis and round up to the next higher 1000. The Department argued that this system was unfair, placing a greater burden on a smaller 911 system than on a larger one.

The Commission will require the Company to revise its price list to price per telephone number. The Company will be allowed, however to propose a flat non-recurring and monthly system administrative charge which the Commission will review for reasonableness.

2. Service Order Language

The Department objected that it was unclear under current price list language whether one or more service order charges would be applied to the ordering of Private Switch ALI. USWC has agreed to clarify the price list to reflect that only one service charge is applied.

3. Location Updates

The Department questioned whether the price list's updating regimen places an unnecessary burden on small PRX systems with infrequent need to report changes. The Department recommended that the proposed language be revised to state that the Company will work with the customer to determine the appropriate method and schedule for updating the PS-ALI data base. USWC has agreed to revise its price list accordingly.

4. Customer Verification of the Data Base

The Department suggested that it would be helpful for the PS/ALI customer to receive a complete database listing from USWC at least once a year to enable the customer to check its quality. The Commission agrees that this would be a reasonable step to maintain high quality in the database.

5. Summary

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. See particulars in the Ordering Paragraphs.

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

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.

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

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.

E. Commission Action

The Commission will close this docket after receipt of the Company's 10 day compliance filing. The Commission will take up the matters when it considers the proposed price list filed in 90 days pursuant to Ordering Paragraph 3.

ORDER

1. Within 10 days of this Order, U S West Communications, Inc. (USWC) shall file a new price list regarding Private Service/Automatic Location Identification (PS/ALI). The price list shall
 - a. clarify the price list language to reflect that only one service order charge is applied to the ordering of Private Switch ALI;

- b. revise the price list to indicate that USWC will work with the customer to determine the appropriate method and schedule for updating the USWC data base;
 - c. require USWC to provide a data base listing to customers at least once per year;
and
 - d. include limitation of liability and indemnity clause language as approved in Ordering Paragraphs 4 and 5 of this Order.
2. Upon receipt of a satisfactory filing pursuant to Ordering Paragraph 1, this docket (P-421/EM-92-341) will be closed.
3. Within 90 days of this Order, the Company shall file a proposed price list which
 - a. modifies the price list to present prices on a per station line basis rather than on a per 1000 line basis and
 - b. includes an up-to-date cost study for the provision of ALI.
4. 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.

5. The following indemnification clause language is approved:

The AS/ALI 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 AS/ALI Customer, its agents and its employees while answering and dispatching 911 calls.

The AS/ALI 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.

6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)