

June 2, 1995

DOCKET NO. P-421/EM-89-694

ORDER ACCEPTING SETTLEMENT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of the Filing of an Initial Price
List by U S West Communications, Inc.

ISSUE DATE: June 2, 1995

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PROCEDURAL HISTORY

On August 21, 1989, U S West Communications (USWC) filed price list and tariff changes for those services it considered were subject to emerging competition under Minn. Stat. § 237.58, subd. 1 (1988 & Supp.).

USWC submitted clarifications and modifications on September 29, 1989, November 29, 1989, March 29, 1990, and June 28, 1990.

On September 6, 1989, the Residential Utilities Division of the Attorney General's Office (RUD-OAG) filed Comments challenging USWC's interpretation of the term "services" for purposes of classification under § 237.58 and objecting to USWC's classification of specific services.

On September 21, 1989, the Minnesota Department of Public Service (the Department) filed a letter concurring in the comments of the RUD-OAG and requested the opening of a Commission investigation of USWC's filing.

On September 28, 1989, McCaw Cellular (McCaw) filed comments supporting the Department's request for an investigation.

On October 26, 1989, Minnesota Business Utility Users Council (MBUUC) wrote to the Commission requesting further study of the USWC filing.

On May 3, 1990, McCaw submitted a letter opposing USWC's March 29, 1990 filing. USWC responded to the issues raised by McCaw on May 14, 1990.

On October 16, 1990, the Commission issued a notice establishing comment periods.

On January 15, 1991, the Department filed comments on the price list filing.

On March 1, 1991, the following parties filed comments on USWC's filing and the Department's comments: the RUD-OAG, AT&T, McCaw, the MBUUC, and the Minnesota Independent Payphone Association (MIPA).

On March 1, 1991, USWC filed a response to the Department's comments.

On April 1, 1991, the Department, USWC, the RUD-OAG, and AT&T filed reply comments.

Following a period of discussion and negotiation between the parties, the Commission issued a notice requesting that the parties submit a list of disputed on September 28, 1994.

On December 1, 1994, McCaw submitted a letter stating that it stood by its previous comments.

On January 31, 1995, the Joint Statement and Agreement reached between USWC, the Department, RUD-OAG, MBUUC, MIPA, AT&T, and McCaw Cellular was filed with the Commission.

On May 9, 1995, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

A. Background

Prior to August 1, 1987, Minnesota Statutes, Chapter 237 treated all services offered by Minnesota telephone companies as fully regulated monopoly services. In 1987, the legislature enacted and the Governor signed into law revisions to Chapter 237 which allowed for an elective system of regulation which allows for telecommunications services to be classified into three possible categories:

- ◆ noncompetitive
- ◆ subject to emerging competition, and
- ◆ subject to effective competition.

Minn. Stat. § 237.58 through § 237.63 prescribes the implementation procedures and circumstances under which service introduction and rate changes can be implemented for the three service classifications.

On July 7, 1989, USWC informed the Commission of its election to become subject to Minn. Stat. § 237.59 through .625 (1988).

This docket was opened to consider USWC's August 21, 1989 filing of price lists and tariff changes for those services it considered were subject to emerging competition. USWC's filing was the first by a large local exchange carrier (LEC) proposing to classify its service under the competitive sections of Minnesota statutes enacted in 1987 and 1989.

At the time this docket was initiated, some parties were concerned that the Commission's decision would have far reaching ramifications on other aspects of regulation under Minn. Stat. § 237.58 and opposed USWC's filing. The level of controversy which attended USWC's filing is reflected in the length and intensity of the participation in this docket.

Effective June 1, 1994, however, the legislature adopted amendments to Minn. Stat. § 237.58 et. seq. that greatly diminish the precedential importance of this price list filing. The new law has eliminated several classification factors that had given rise to intense disputes: 1) that a service had been "previously offered"¹ and 2) that the revenue generated by the service in question was below a certain level.² Rather, the amended statute Minn. Stat. § 237.59, subd. 2 allows a new service offered by a telephone company to be classified at the outset as subject to emerging competition as follows:

A new service must be regulated under the emerging competition provisions if it is not integrally related to the provision of adequate local service or access to the telephone network or to the privacy, health, or safety of the company's customers....

USWC believes that this provision in the 1994 amendments resolves this docket.

Other parties disagree with USWC's position. They feel that the grandfathering provision can not be applied until the classification issues disputed in this docket have been determined by the Commission.

B. Terms of the Agreement

Despite their disagreement regarding the impact of the 1994 amendments, the parties have, for purposes of resolving this case, determined a classification of either "noncompetitive" or "subject to emerging competition" for each of USWC's services under Minn. Stat. § 237.59 (1994). The classifications proposed in the Agreement are as follows:

¹ Minn. Stat. § 237. 59, Subd. 1, subparagraph 18 (1989) classified services not previously offered prior to August 1, 1987 as subject to emerging competition.

² Minn. Stat. § 237. 59, Subd. 1, subparagraph 19 (1989) classified a service that generates an annual revenue equal to or less than the greater of one-tenth of one percent or \$100,000 of a telephone company's gross annual revenues in the year the company elects to be covered by this section as subject to emerging competition.

Noncompetitive Services`

Combined mainline Service
Central Office Trunks
Directory assistance - IntraLATA toll and local (to customers of USWC and other companies)
DID service - for in only PBX trunks
Enhanced 911 network and database management
Extended area service
Foreign exchange service - except 4-wire term arrangement
One-party local exchange service (measured or flat rate)
Two-party local exchange service (message or flat rate) obsolete service
PBX trunks (flat rate or message rate)
Market expansion line
Operator assisted directory assistance
Private directory service
Switched access service
Service Charges for noncompetitive services
Semi-public telephone service (flat rate or message rate)
Touchtone³
Call waiting
Call forwarding variable
Option for call forwarding without call completion⁴Cross reference, regular and temporary listings⁵
Foreign exchange listings⁶
Local calling card operator services (own customers and others)⁷
Local station to station operator service (own customers and others)⁸
Cellular carrier Service (access and usage)
Special Access

³ In docket number P-421/EM-93-994, USWC has filed to eliminate most of the separate touchtone charges. The remaining touchtone charges may be eliminated in a soon-to-be-filed centrex services filing. Touchtone is considered one service to be classified as noncompetitive until it is eliminated as a separate service.

⁴ The parties believe that the option for call forwarding variable without call completion should have the same classification as call forwarding variable.

⁵ This is considered a single service provided to metro and outstate customer groups. The entire service will be classified as noncompetitive.

⁶ This is considered a single service provided to metro and outstate customer groups. The entire service will be classified as noncompetitive.

⁷ Local operator services, as offered to all customers (of USWC or other LECs). Only local person-to-person is below the revenue cutoff, and classified as emergingly competitive. Local station and calling card are classified as non-competitive.

⁸ Local operator services, as offered to all customers (of USWC or other LECs). Only local person-to-person is below the revenue cutoff, and classified as emergingly competitive. Local station and calling card are classified as non-competitive.

Construction Charges
Customized numbers

Emergingly Competitive Services

Apartment door answering service
Automatic call distribution
Billing and collection services
Call waiting, call forwarding, 3-way calling for businesses with 3 or more lines
Centron (features and access)
Centrex (features and access) obsolete service
Group Use service(features and access) obsolete service
Command-a-link
Special assemblies
Switchnet 56 service
Direct customer access
IntraLATA toll service
IntraLATA private line service
IntraLATA WATs service
Mobile radio service
Toll operator services
Public pay telephone services, excluding access to central office
Adjacent exchange service
Advanced private line termination
Alternate listings
Automatic identified outward dialing
Auto intercept
Automatic Number Identification (ANI) (Pay per CATV Service)
Basic 911
Basic 911 equipment
Billed number screening
Busyline verify/busy line interrupt
Called number identification service
Central office transfer and relay and make busy equipment
Common control switching arrangement access line
terminal

Connection of terminal equipment and communications systems
Customnet
E911 equipment
Foreign exchange 4 wire termination arrangement
Hotel PBX message rate with and without guest dialing
Intracall service
Joint user service
Maintenance of service charge
Mileage charges
Night service arrangement
Power failure transfer
Public response calling service
Radio common carrier service
Repair service provided to exchange carriers
Returned check charge
Semi-private directory service
Simultaneous voice and data service
Specialized customer premise equipment
Tie line termination
Telephone answering service
Toll restriction
Toll diversion (dial 9 from PBX)
976 delivery service
976 IDS access restriction
3-way calling
Special construction
Speed dial 8 numbers
Speed dial 30 numbers
Versanet alarm access line
Selective carrier denial
ISDN
Custom Ringing
Digital switched service
Local person-to-person operator service

The parties stated that they arrived at their joint Statement and Agreement as a package and intend to be bound by it only as a complete agreement. The parties noted that if the Commission modified any portion of the Agreement, the Agreement would become voidable by any party pursuant to Minn. Stat. § 237.076, subd. 2 (1994).

C. Commission Analysis

The Commission reviews the Joint Statement and Agreement as a proposed settlement pursuant to Minn. Stat. § 237.076, subd. 2 (1994) which states that the Commission may accept a settlement upon finding that to do so is in the public interest and is supported by substantial evidence.

An issue central to the parties' classification effort is the method for determining whether an offering constitutes a separate service which, as such, is entitled to a separate classification. The parties devoted considerable attention to that question and applied the following concepts in making that determination:

1. A service is not listed separately solely because it is priced differently for different customer groups, e.g. residence and business customer groups or metro and outstate customer groups.
2. A service may have both fixed and usage pricing elements, but these pricing elements are not separate services.
3. A bundling of two or more services for pricing purposes does not create a separate service.

The Commission finds that this approach is reasonable and will accept it for purposes of this docket.

Regarding the specific classifications proposed in the Agreement, the Commission notes at the outset that the Agreement is the result of extensive discussions, particularly by USWC and the Department, in which the parties evaluated, maintained, or revised their positions as a result of discussion and the exchange of a great deal of information. Through this process the parties reached consensus as to the classification the USWC services appearing on a list attached to the Agreement.

The extensive involvement of diverse parties, including representatives of the public (the Department and the RUD-OAG) is assuring, but inadequate in itself to persuade the Commission to accept the proposed settlement. Therefore, the Commission has reviewed each classification proposed in the Agreement and, based on such review, finds that the proposed classifications are reasonable. The Commission notes with appreciation to the parties that they included for each service a reference to that part of Minn. Stat. § 237.59 (1994) relied upon in making the proposed classification. In addition, the parties supplied endnotes explaining their handling of the few services where the circumstances were not obvious. These were also helpful and provide basis in the record for approval.

A further consideration in evaluating the acceptability of this Agreement is an understanding of the length of time and expenditure of regulatory resources that would be entailed in modifying the proposed Agreement.

D. Commission Action

Based on the foregoing analysis, the Commission finds that the parties' proposed settlement of this matter is reasonable, in the public interest, and supported by substantial evidence. Accordingly, the Commission will accept it, give effect to the classifications proposed therein, and close this docket.⁹

ORDER

1. The Joint Statement and Agreement filed by the parties in this matter dated January 31, 1995 (copy attached) is accepted as being in the public interest and supported by substantial evidence.
2. Within 30 days of this Order, U S West Communications, Inc. (USWC) shall file tariffs and price lists implementing the terms of the Joint Statement and Agreement.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

⁹ It is appropriate to note here that several questions have not been proposed for definitive resolution in the Agreement and are not so resolved. For example, the issue of whether the amendments to Minn. Stat. § 237.59, subd. 1(b) (1994) resolves this docket is not settled. In addition, any service classified pursuant to this Agreement may be reclassified under terms of the current law. Further, In addition, in future proceedings a party may argue that services listed singly for classification purposes should be considered as multiple services for some other purpose, and other parties may oppose such an argument. Finally, the Agreement (and hence the Order) expresses no opinion as to whether a service may, under appropriate market conditions, be classified as competitive for business customers but noncompetitive for residential customers.