

ISSUE DATE: March 8, 1996

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

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
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Chair
Commissioner
Commissioner
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Commissioner

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

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PROCEDURAL HISTORY

On July 21, 1994, the Commission issued its ORDER SETTING IMPLEMENTATION GUIDELINES FOR INTRALATA 1+ PRESUBSCRIPTION in the above-captioned docket. In that Order the Commission established a schedule for the implementation of intraLATA 1+ equal access and presubscription for Minnesota local exchange carriers (LECs) that do not currently provide the service. Because issues surrounding the intraLATA presubscription of payphones were not resolved in the July 21 Order, the Commission asked the Department of Public Service (the Department) to initiate an investigation into the treatment of payphones.

After considering the Department's report and the comments of interested parties, the Commission issued its ORDER DETERMINING SELECTION OF INTRALATA 1+ AND 0+ PRESUBSCRIBED CARRIERS FOR PAYPHONES on December 18, 1995. In that Order the Commission established the method of intraLATA presubscription for the three major types of payphones in Minnesota. The Commission determined that LECs should select the presubscribed intraLATA provider for public payphones. Premise occupants should select the presubscribed provider for semi-public payphones. Premise occupants or independent payphone providers should select the presubscribed provider for customer-owned coin-operated telephones (COCOTs).

On January 5, 1996, AT&T filed a request for reconsideration of the Commission's December 18, 1995, Order.

On January 8, 1996, US WEST Communications, Inc. (US WEST) filed a request for reconsideration.

On January 16, 1996, the Department filed comments in which it recommended that both petitions for reconsideration be denied.

On January 17 and 18, 1996, US WEST and AT&T, respectively, filed responses to the

reconsideration petitions.

On February 13, 1996, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. THE PETITIONS FOR RECONSIDERATION

A. AT&T

AT&T asked the Commission to reconsider the portion of the December 18, 1995, Order dealing with the selection of intraLATA 1+ and 0+ presubscribed carriers for public payphones. According to AT&T, the premise occupant, not the LEC, should select the presubscribed intraLATA carrier for public payphones.

AT&T stated that US WEST and GTE Minnesota control approximately 18,500 of the 22,000 payphones in Minnesota; these companies logically will select themselves as presubscribed intraLATA toll providers.¹ The resulting advantage of these dominant local carriers would be contrary to the Commission's intention of creating a "level playing field" as intraLATA toll service moves into a competitive era.

B. US WEST

US WEST asked the Commission to reconsider the portion of the December 18, 1995, Order dealing with the selection of intraLATA 1+ and 0+ presubscribed carriers for semi-public payphones. According to US WEST, the LEC, not the premise occupant, should select the presubscribed intraLATA carrier for semi-public payphones.

US WEST stated that LECs and independent payphone providers compete with each other for payphone locations. A LEC providing a semi-public payphone and a payphone company providing a payphone on third-party premises are similarly situated. If the payphone provider (such as AT&T) providing the instrument for a COCOT situation is allowed to select the intraLATA carrier, so should the LEC supplying the instrument in a semi-public payphone situation. Without such symmetry, US WEST argued, it is left at a competitive disadvantage. The resulting loss of operator and toll calling revenue for US WEST, plus the loss of payphone locations to competitors, will mean that payphone service rates will rise. Higher rates may mean less availability of payphones in low traffic areas.

II. DEPARTMENT COMMENTS

¹ GTE's selection of itself as the presubscribed intraLATA provider is currently impossible, because it does not at this time provide any toll service in Minnesota.

The Department recommended that the Commission deny both petitions for reconsideration. The Department stated that AT&T and US WEST provided no new arguments which would warrant reconsideration of the December 18, 1995, Order.

The Department stated that the Commission's treatment of payphone intraLATA provider selection is correct because it consistently permits the wholesale customer to make the intraLATA carrier selection.

III. COMMISSION ACTION

In its December 18, 1995, Order, the Commission treated intraLATA toll provider selection consistently for the three types of payphones. In each case, the party who facilitates the provision of payphone service, either by owning and placing the telephone or by paying the underlying provider to place and maintain the telephone, selects the intraLATA toll provider presubscribed to the payphone. In public payphone situations, the LEC owns, places, and maintains the instrument and preselects the intraLATA provider. For semi-public payphones, the premise occupant arranges for the placement and maintenance of the payphone by paying the LEC a monthly fee for service as well as non-recurring charges for network connection. The premise occupant selects the intraLATA provider. In COCOT situations, the premise occupant may own and maintain the telephone itself, or an independent payphone provider may pay the occupant a commission to place, maintain, and operate the payphone. Depending on the type of ownership, the premise occupant or the payphone provider selects the intraLATA presubscribed provider.

In each case, the wholesale customer, as the Department terms it, is making the payphone service available to the public. This party is making the decision to place the telephone and taking the business risk of the cost of placement. The quality of intraLATA toll service provided affects the party's own customers (whether the customers are the LEC's ratepayers, the business owner's patrons, or the payphone provider's business customers). This party logically should be able to control the selection of the intraLATA 1+ and 0+ toll provider.

The Commission continues to find that its treatment of intraLATA selection for payphones is equitable, logical, and consistent. In an era of increasing competition for intraLATA toll service, the Commission has provided a framework for service selection; within that framework, providers are still free to compete. The Commission disagrees with AT&T, for example, that the Commission's allowing LECs to select intraLATA service for public payphones is antithetical to intraLATA toll competition. A site owner is free to ask an independent payphone provider (which could be AT&T) to come into a site and provide payphone service. The Commission also disagrees with US WEST that provider selection by the premise occupant for semi-public payphones is poor payphone policy. All potential intraLATA toll providers, including US WEST, are free to negotiate with the premise occupant for the terms under which intraLATA toll service will be provided. Presumably, the premise occupant will select the provider on the basis of terms and quality of service.

The Commission finds that the companies have raised no new issue or argument which warrants reconsideration of the Commission's December 18, 1995, decision.

IV. TELECOMMUNICATIONS ACT OF 1996

The parties noted, and the Commission is well aware, that the federal Telecommunications Act of 1996 was passed since the comment period for this proceeding ended. Under that Act, the Federal Communications Commission is obliged to promulgate rules to implement the legislation within nine months. These rules may impact the Commission's decisions regarding payphone provider selection of intraLATA toll service.

At this time, however, the Commission must provide necessary answers regarding these issues for LECs, independent providers, and premise occupants. When the federal rules are promulgated, the Commission may need to revisit these decisions to determine if the rules are consistent with or in conflict with the Commission's Orders in this area.

ORDER

1. The Commission denies the petitions for reconsideration filed by US WEST and AT&T.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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