

ISSUE DATE: April 26, 1996

DOCKET NO. P-421/C-95-1036

ORDER INITIATING EXPEDITED PROCEEDING AND ESTABLISHING TIMETABLE
FOR COMMENTS AND REPLIES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of a Formal Complaint of the
Members of MIPA Against U S WEST

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PROCEDURAL HISTORY

On October 5, 1995, the members of the Minnesota Independent Payphone Association (MIPA) filed a formal complaint against U S WEST Communications, Inc. (USWC). MIPA would like USWC to provide one-party flat business line (1FB), instead of the Public Access Lines (PAL), for the use of MIPA's members. MIPA asked the Commission to order USWC to comply with Minn. Stat. §237.121 (5), which became effective on August 1, 1995, and to require the Company to cease imposing restrictions on the resale and shared use of USWC's services and network functions. In addition, MIPA requested that the Commission direct USWC to refund amounts for payments over 1FB rates placed in escrow by some MIPA members since August 1, 1995.

On December 6, 1995, the Commission issued its ORDER ASSERTING JURISDICTION OVER COMPLAINT, REQUIRING ANSWER AND SOLICITING COMMENTS. The Commission directed USWC to answer the complaint within 20 days, and encouraged other parties to file comments in this matter.

On December 22, 1995, USWC filed its answer.

On January 5, 1996, MIPA, the Minnesota Department of Public Service (the Department), AT&T, and Enhanced Telemanagement Inc. d/b/a Frontier Telemanagement Inc. (Frontier) submitted Comments.

On January 16, 1996, MIPA, USWC and MCI filed Reply Comments.

On April 2, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Background

MIPA members would like to subscribe to USWC's one party flat business line (1FB) service. Instead, USWC requires MIPA members to subscribe to a higher priced and separately tariffed service, Public Access Lines (PALs), for their pay telephone service.

Newly enacted legislation, Minn. Stat. § 237.121 (Supp.1995), states in pertinent part:

A telephone company or telecommunications carrier may not do any of the following with respect to services regulated by the commission:

.

- (5) impose restrictions on the resale or shared use of its services or network functions, provided that:
 - (I) it may require that residential service may not be resold as a different class of service; and
 - (ii) the commission may prohibit resale of services it has approved for provision for not-for-profit entities at rates less than those offered to the general public;....

In its complaint, MIPA asserted that this statute, which became effective on August 1, 1995, prohibits a telephone company from imposing resale restrictions and that USWC's refusal to provide MIPA members with 1FB lines for resale as payphone service violates the new law. MIPA requested the Commission to direct USWC to comply with the new law and require the Company to cease imposing restrictions on the resale and shared use of USWC's services and network functions. MIPA also wanted the Company to be required to provide (pursuant to the new statute) certain features for resale, such as one-party flat business line (1FB) for its pay telephone service.

In this Order, the Commission considers the Answer that USWC has filed in response to MIPA's complaint and determines what steps it will take further in this matter.

B. USWC's Answer

USWC requested that the formal complaint be dismissed and the relief requested by MIPA members be denied. As interpreted by USWC, the newly adopted Minn. Stat. §237.121 (5) only prohibits the telephone company from imposing restrictions on resale and does not supersede all Commission approved tariffs and orders. Specifically, USWC argued that since the Commission adopted PAL as the specific class of service for COCOT providers after an extensive contested case hearing, the new law cannot be intended to simply abrogate the current

tariffed provisions.

In response to the Commission's request in its December 6, 1995 Order in this matter for comment regarding the difference between Public Access Line (PAL) and one-party flat business line (1FB), USWC explained that the services do not differ significantly in terms of call transmission and the operation of the switching equipment and the cable facilities, except for measuring capabilities. PAL does differ from 1FB, however, according to USWC, in several material respects, including the following:

- PAL has higher call usage per month;
- the manner of providing line class codes and screening codes for PAL is different;
- only PAL is configured to be compatible with the provision of vendor billing services; and
- PAL has higher installation costs.

USWC argued that it should not be required to modify its business systems to satisfy the unique needs consistent with the PAL service and, further, that allowing COCOT providers to purchase 1FB instead of PAL for payphone resale will let them avoid paying COCOT-related costs.

C. MIPA's Response

MIPA countered that the plain meaning of Minn. Stat. §237.121 (5) prohibits USWC from restricting MIPA members from reselling 1FB rather than PAL. Accordingly, the provisions of Minn. Stat. §237.121 (5) invalidated USWC's tariffs effective on August 1, 1995, the date the new law took effect.

According to MIPA, closer examination of the provisions of Minn. Stat. §§237.121 (4), 237.09 (2), 237.16 and 237.76 cited by USWC shows that USWC may not refuse to provide the services requested by MIPA members.

Further, MIPA claimed that 1FB and PAL services are functionally and technically the same and only the rates are different. MIPA disputed the meaningfulness of the differences alleged by USWC, noting for example that vendor billing service is simply an option that its members may wish to forgo if they decide to convert from PAL to 1FB lines.

MIPA recommended that the Commission proceed in an expedited manner based on briefs and oral arguments, preceded, however, by a discovery period for the Department and all other parties on the single question of what differences, if any, exist between 1FB and PAL lines.

D. The Department's Comments

The Department did not directly address the issue of the validity of USWC's construction of legislative intent and the other parties' responses to the legal dispute. According to the

Department, the application of Minn. Stat. §237.121 (5) to the COCOTs' purchase of 1FB rather than PAL depends on whether PAL is functionally the same service as 1FB. The Department stated that it lacks sufficient information to make a recommendation at this time and asked the Commission for an opportunity to engage in discovery and to file supplemental information within 60 days.

E. AT&T's Comments

AT&T supported MIPA's complaint and requested the Commission to order USWC to make 1FB available to AT&T and other payphone providers for COCOT service. According to AT&T, Minn. Stat. §237.121 clearly prohibits restrictions on resale. AT&T argued that USWC's suggestion to resort to rules of statutory construction to interpret the law's meaning is unnecessary. AT&T included legal cases underscoring the plain meaning of the law.

In response to the Commission inquiries, AT&T argues that there are no fundamental technological differences between PAL and 1FB lines, except that PAL's functionality is enhanced by the addition of certain vertical services. AT&T supports its argument with a similar finding by the Washington Utilities and Transportation Commission in Docket No. UT-920174, and by U S WEST's own acknowledgment of the fundamental similarity between the two services at page 6 of USWC's answer.

AT&T asserted that the distinctions between 1FB and PAL do not constitute material differences and argued that justifiable pricing or operational differences could be addressed without tariff restrictions. AT&T stated that USWC's answer contains unsubstantiated facts about the usage and cost of 1FB and PAL lines. AT&T responded to each of the alleged factual differences asserted by USWC, denying that they constituted material differences. AT&T stated, however, that if the Commission concluded that there are unresolved material fact disputes, AT&T recommends an expedited proceeding similar to the procedures used for the United and Frontier AFOR filings.

F. ETI's Comments

ETI argued that the straightforward and unambiguous language of Minn. Stat. §237.121 (5) forbids a telephone company to impose any restrictions on the resale or shared use of its service or network function, other than those expressly set forth in the statute.

G. MCI's Comments

MCI agreed with MIPA and AT&T that the Commission should order USWC to provide 1FB lines to COCOT providers for public and semi-public payphone access and resale. MCI supported the contentions that 1) the plain language of the law is clear; 2) the context of the 1995 legislation on telephone competition bolsters the removal of restrictions on resale; and 3) the new law requires a Commission reexamination of the COCOT decision.

MCI argued that any alleged differences between PAL and 1FB lines may not be functional, but

could be an accommodation of USWC's existing systems and rate structures designed to comply with the COCOT Order. MCI also supported the other parties' procedural recommendation for an expedited contested case proceeding.

H. Commission Analysis and Action

This complaint requires the Commission to decide whether recent adoption of Minn. Stat. § 237.121 (5) (Supp.1995) means that USWC is required to sell 1FB to COCOT providers for resale under the 1FB tariff or whether USWC will be allowed to maintain its PAL tariff for COCOT providers.

In the Commission's view, this question turns on whether the service provided as PAL is functionally equivalent to 1FB service. The Commission finds that the question whether PAL and 1FB are functionally equivalent remains a disputed material fact and that there is a need to fully develop the record in this case before making that finding.

Minn. Rule 7829.1900 requires the Commission to act on a formal complaint through a contested case proceeding, informal proceeding or expedited proceeding. Since all the parties have agreed to an expedited proceeding, the Commission will proceed in that manner. Interested parties will be directed to submit affidavits to substantiate the facts and submit supplemental comments within 60 days of the Order, and replies within 90 days. The filings should provide the evidence the Commission needs to make its determination on whether PAL and 1FB lines are functionally the same. Parties are encouraged to fully develop their arguments within the following framework of topics set out in Ordering Paragraph 2.

ORDER

1. The Commission hereby initiates an expedited proceeding to determine whether USWC's Public Access Lines (PAL) service is functionally equivalent to its one-party flat business line (1FB) service.
2. Within 60 days of this Order, all interested parties shall submit supplemental comments, including affidavits as relevant, using the following categories as a guideline for the comments:
 - (1) List and define all features or vertical services that are bundled in the provision of PAL lines which are not available with 1FB.
 - (2) Discuss whether the features or vertical services offered with PAL and presented under 1 above are material or integral to the resale of COCOT services.
 - (3) Discuss whether these other vertical services should be purchased

separately with 1FB. Why or why not?

- (4) If there are differences in usage, nonrecurring charges, and other factors, discuss whether these differences justify a separate class of service for COCOT providers.
 - (5) Discuss how consumer protections as required by the Commission will be retained if 1FB is used for the provision of payphone services.
 - (6) Discuss how the 1996 federal telecommunications law affects this case.
3. Interested parties wishing to file reply comments shall do so within 90 days of this Order.
 4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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