ISSUE DATE: February 7, 1997

DOCKET NO. P-999/CI-96-482

ORDER ESTABLISHING BUSINESS PRACTICES FOR INTRALATA PRESUBSCRIPTION FOR LOCAL EXCHANGE CARRIERS OTHER THAN US WEST

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey	Chair
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Mac McCollar	Commissioner
Don Storm	Commissioner

In the Matter of an Investigation into Business Office Practices for IntraLATA Presubscription

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PROCEDURAL HISTORY

On January 12, 1996 the Commission issued an Order requiring US WEST Communications, Inc. (US WEST) to follow specific business practices in implementing intraLATA presubscription.[1] The Order noted that the business practices required of US WEST would be precedential in dealing with other local exchange carriers in the future.

On April 25, 1996 the Department of Public Service (the Department) filed comments setting forth the business practices it recommended the Commission require local exchange carriers other than US WEST to follow in implementing intraLATA presubscription.

On May 7, 1996 the Commission issued a notice initiating an investigation into the intraLATA presubscription business practices of local exchange carriers other than US WEST. The notice was served on all local exchange carriers, all interexchange carriers, and other potentially interested persons. It solicited comments on the Department's filing and established time frames for commenting.

On June 3, 1996 initial comments were filed by Enhanced Telemanagement, Inc. d/b/a Frontier Telemanagement, Inc. (FTI), Frontier Communications of Minnesota, Inc. (Frontier), the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE), and US WEST.

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[1]In the Matter of an Investigation into IntraLATA Equal Access and Presubscription, Docket No. P-999/CI-87-697, ORDER ESTABLISHING US WEST BUSINESS PRACTICES FOR INTRALATA PRESUBSCRIPTION (January 12, 1996), hereinafter, "the US WEST Order."

On June 17, 1996 reply comments were filed by the Department, AT&T Communications of the Midwest, Inc., the Minnesota Independent Coalition (MIC), and MCI Telecommunications Corporation (MCI).

The matter came before the Commission on December 31, 1996.

FINDINGS AND CONCLUSIONS

I. Factual Background

"IntraLATA presubscription" is the technical term for a customer's selection of a long distance carrier for calls within his or her own LATA (Local Access and Transport Area). LATAs are compact geographical areas established under the AT&T divestiture consent decree. Under the decree, Bell Operating Companies such as US WEST could provide long distance service within LATAs, but not between them. Minnesota has five LATAs.

Formerly, US WEST carried all intraLATA long distance traffic throughout the state. A long series of Commission initiatives, however, beginning in 1987, opened Minnesota's intraLATA markets to competition, mandated statewide 1+ access to competing intraLATA carriers, and imposed deadlines to implement these decisions. The US WEST business practices Order was the latest in this series and was designed to ensure that, when dealing with local service customers choosing intraLATA carriers, US WEST did not exploit its position as dominant local carrier to influence their choice.

The Department's April 25 filing pointed out that most local exchange carriers now have some affiliation with an intraLATA long distance carrier, creating a need, in that agency's view, to ensure that these carriers, too, give their customers competitively neutral information about intraLATA long distance options.

II. The Department's Recommendations

The Department recommended establishing the following business practice standards for non-US WEST local exchange carriers:

> (1) Permitting only one PIC (primary interexchange carrier) change charge, instead of separate intraLATA and interLATA charges, when a customer switches to the same carrier for intra- and inter-LATA service;
>
> (2) Limiting the PIC change charge to $5.00 in the absence of proof that the carrier's costs exceed that amount and that a higher charge is otherwise appropriate;
>
> (3) Requiring local exchange carriers to process PIC change requests, and local resellers to notify the underlying carrier of PIC change requests, within two days;

(4) Permitting local exchange carriers who have been asked to freeze a customer's interLATA PIC and who cannot freeze interLATA PICs without freezing intraLATA PICs as well, to freeze both, with full disclosure to the customer;

(5) Requiring local exchange carriers to provide their customers with accurate, competitively neutral information about long distance options;

(6) Assigning customers who fail to choose an intraLATA carrier to their interLATA carrier, but assigning new customers to no intraLATA carrier until they have chosen one.

III. Commission Action

As the Department has pointed out, most local exchange carriers now have some affiliation with an intraLATA long distance carrier. If intraLATA competition is to thrive, local exchange carriers must give their customers accurate information about intraLATA long distance options and must not exploit their positions to gain an unfair advantage over competing intraLATA carriers. The Commission will therefore require all non-US WEST local exchange carriers who are parties to this proceeding to follow the competitively neutral business practice standards established here.

Each of the Department's recommendations will be addressed in turn.

A. Permitting Only One PIC Change Charge When Customer Chooses Same Intra- and Inter-LATA Carrier

This recommendation was unopposed and is consistent with the US WEST business practices Order. The Commission agrees that, in the absence of reliable cost studies demonstrating a factual basis for two PIC charges, one charge should apply.[2]

B. Limiting PIC Change Charges to $5.00 in the Absence of Reliable Evidence Supporting a Higher Charge

Most of Minnesota's local exchange carriers charge $5.00 to change a customer's primary interexchange carrier, largely because the Federal Communications Commission (FCC) has established that amount as a base line indicator of reasonableness for <u>interLATA</u> PIC change charges. The Department urges establishing the same base line standard for intraLATA PIC change charges, since high charges for changing intraLATA providers could clearly inhibit intraLATA competition.

[2] The Commission agrees with the Department that, while total service long run incremental costs studies should be required of the larger companies, independent companies may submit variable cost studies in their stead.

The Commission agrees with the Department and commenting parties that it is important to ensure that high PIC change charges do not inhibit the intraLATA competition state and federal policymakers have mandated. The prevailing industry standard of $5.00 will serve as a useful base line for judging reasonableness. The application of that standard for <u>inter</u>LATA charges has apparently neither inhibited competition nor worked a hardship on local exchange carriers.

The Commission will therefore require all local exchange carriers who are parties to this proceeding to limit PIC change charges to $5.00, unless and until they have demonstrated that their costs exceed that amount and that a higher charge is reasonable.[3]

C. Processing PIC Change Requests Within Two Days

The Department recommended requiring facilities-based local exchange carriers to implement PIC change requests within two days and requiring local service resellers to notify the underlying carrier of PIC change requests within two days. Commenting parties agreed that this time frame is generally workable. Several parties expressed concern, however, about meeting the time frame during advertising blitzes, especially those targeting specific geographic areas.

The Commission agrees with the Department that robust competition could be inhibited by delays between a customer's selection of an intraLATA carrier and receipt of service from that carrier. The Commission will therefore require local exchange carriers to act on PIC change requests within two days, unless a sudden and significant increase in demand makes that impossible. In those cases, the carrier will be required to notify the Department by letter. This approach should minimize regulatory compliance costs without jeopardizing the prompt response to consumer choice essential to successful competition.

D. Permitting Carriers to Freeze Both Inter- and IntraLATA PICs

Customers occasionally ask local exchange carriers to "freeze" their PIC choice, that is, not to honor PIC change requests made by interexchange carriers on behalf of the customer. (In the interests of efficiency, PIC change requests are often handled between local exchange carriers and interexchange carriers. Customers who request a freeze generally have had problems with this procedure.)

In the US WEST Order the company was permitted to freeze both inter- and intraLATA PICs as long as it lacked the technical capacity to distinguish between the two. Once it gained that capacity, however, the company was required to inform customers that they could freeze one PIC and not the other, or freeze each PIC to a different provider. The Department recommended the same procedure here.

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[3]For public policy reasons, the full cost of every noncompetitive service is not necessarily built into its rate, but may be recovered in part from the rates for other services. Where this is true of PIC change charges, it would not be appropriate to increase those charges to cover costs.

The Commission agrees that, to the extent that a local exchange carrier can freeze one PIC and not the other, it should. Inter- and intraLATA toll service are different markets, with different providers. Customers requesting an interLATA PIC freeze may not want or need an intraLATA freeze, and vice versa. Good customer service, which in this case means a full explanation that only one PIC is being frozen, should protect customers from being confused.

At the same time, the Commission agrees with the Department that companies that cannot freeze only one PIC should be allowed to freeze both, with full disclosure to the customer. In these situations, promoting intraLATA competition by making it easy to change providers must yield to customers' rights to determine how much control they want to exercise over their long distance accounts.

E. Requiring Accurate, Competitively Neutral Information about IntraLATA Options

Customers exploring or exercising their intraLATA options will at some point contact their local exchange carrier. Since that carrier is likely to be affiliated with an intraLATA long distance provider, the potential for over-reaching cannot be ignored. For competition to thrive, customers must receive accurate, unbiased, competitively neutral information on intraLATA providers from their local exchange carriers.

The Department advocated the following requirements to ensure local exchange carriers' neutrality in fielding inquiries on intraLATA providers:

> (1) Barring local exchange carriers from rewarding customer service staff, as opposed to sales staff, for a customer's choice of a particular intraLATA provider;
>
> (2) Requiring local exchange carriers to provide on request a list of all available intraLATA providers, scrambled at least monthly so no carrier permanently enjoys the advantage of being first on the list;
>
> (3) Requiring local exchange carriers to file the scripts their customer service staff will follow in fielding intraLATA presubscription inquiries, to allow interested persons to examine them for competitive neutrality;
>
> (4) Requiring billing and collection contracts between local exchange carriers and intraLATA providers to address local carriers' use of proprietary information obtained in the course of billing and collections.

1. Non-controversial Recommendations

Recommendations 2 and 4 were non-controversial, will clearly promote a competitively neutral environment, and will be adopted.

2. Rewarding Customer Service Staff for Steering Customers to Particular Carriers

Frontier and FTI objected to the proposed prohibition on rewarding customer service staff when customers select particular intraLATA carriers, claiming it would promote inefficiency. They also pointed out that the Telecommunications Act of 1996 permits companies having less than a specified market share to jointly market local and long distance service. 47 U.S.C. § 271 (e) (1).

First, the Commission notes that the federal statute is not directly on point. What is at issue here is not joint marketing of local and long distance service, but using the customer service representatives of local exchange companies to "steer" customers toward affiliated long distance providers. Such steering could give intraLATA providers affiliated with local exchange carriers an unearned and anti-competitive advantage over unaffiliated providers.

Second, the Commission agrees with the Department that, at least in the early stages of intraLATA competition, it is crucial for customers to receive neutral information from their local exchange carriers. Most local customers, especially residential customers, are still unfamiliar with the competition developing in the local and intraLATA markets. They are more likely to view intraLATA information from their local phone company as public service information than marketing material. Affiliates of local exchange carriers are therefore in a strong position to dominate the intraLATA market before it develops.

To prevent this, the Commission will adopt the Department's recommendation to prohibit local exchange carriers from rewarding their customer service staff when customers choose particular intraLATA carriers. At this stage in the development of intraLATA competition, the potential for customer confusion is simply too high to allow customer service representatives to double as sales agents. Customers cannot adjust to the dismantling of a seventy-year-old monopoly overnight; they are unlikely to realize that customer service representatives may now have divided loyalties.

At least until customers have had a chance to develop a working understanding of intraLATA competition, it would be unfair to competitors to allow local exchange carriers to steer customers toward affiliated intraLATA carriers. Consistent with its duty to nurture intraLATA competition, the Commission will not permit local exchange carriers to reward customer service representatives for customers' selection of any particular intraLATA carrier.

3. Filing IntraLATA Presubscription "Scripts"

Customer service representatives typically follow "scripts" in fielding customers' questions about intraLATA presubscription. The Department initially recommended Commission approval of these scripts, as required under the US WEST Order, but revised its recommendation in response to claims by GTE, Frontier, and FTI that pre-approval would be unduly burdensome. The Department's revised recommendation was to require companies to file the scripts for public perusal and for the Commission to adjudicate any complaints raised about them.

The Commission agrees with the parties on the importance of administrative simplicity, but believes that goal will be better served by requiring preapproval of scripts. The revised procedure recommended by the Department would leave scripts open to challenge indefinitely; local exchange carriers could never assume their scripts would not be challenged and would never have the security of knowing they had been approved by the Commission.

The stability that Commission approval would add to the process would be well worth the time and effort that approval would require. The Commission will expedite the script approval process by authorizing staff to approve proposed scripts, with prompt Commission review available to any party who requests it.

Finally, requiring pre-approval of intraLATA presubscription scripts is better policy, at this point, than requiring filing alone. The approval process will allow the Commission to promptly identify and immediately correct any proposed script posing an anticompetitive threat.

F. Assigning PICs to Customers Who Fail to Make a Choice

The Department recommended assigning existing customers who fail to choose an intraLATA carrier to their interLATA carrier, while assigning new customers to no intraLATA carrier until they have chosen one. This recommendation promotes consumer choice without disrupting existing service. It was unopposed and will be adopted.

G. Conclusion

The Commission will require all local exchange carriers who are parties to this proceeding to follow the business practices set forth above to promote the development of robust competition in the intraLATA long distance market.

ORDER

1. All local exchange carriers who are parties to this proceeding shall charge only one PIC change charge when a customer switches to the same carrier for inter- and intraLATA long distance service, unless the carrier establishes that separate charges are cost-justified and otherwise reasonable.

2. All local exchange carriers who are parties to this proceeding shall limit their PIC change charges to $5.00 unless the carrier establishes that a higher charge is cost-justified and otherwise reasonable.

3. All facilities-based local exchange carriers who are parties to this proceeding shall implement PIC change requests within two days of receipt, unless a sudden and significant increase in demand makes that impossible, in which case they shall notify the Department of Public Service by letter.

4. All non-facilities-based local exchange carriers who are parties to this proceeding shall notify the underlying carrier of PIC change requests within two days of receipt, unless a sudden and significant increase in demand makes that impossible, in which case they shall notify the Department of Public Service by letter.

5. All local exchange carriers who are parties to this proceeding shall provide customers who request a PIC freeze with full information on whether the carrier can freeze only one of the customer's two PICs. If the carrier cannot freeze only one, the carrier shall freeze the customer's intraLATA PIC when an interLATA freeze is requested, with full disclosure to the customer.

6. All local exchange carriers who are parties to this proceeding shall provide to customers on request a list of all available intraLATA providers, scrambled at least monthly.

7. All local exchange carriers who are parties to this proceeding shall address in their billing and collection contracts with intraLATA providers their use of proprietary information obtained in the course of billing and collection.

8. Within 30 days of the date of this Order all local exchange carriers who are parties to this proceeding shall file for review and approval by the Commission or its staff the scripts to be used by customer service representatives in discussing intraLATA presubscription with customers.

9. No local exchange carrier who is a party to this proceeding may reward any member of its customer service staff because any customer selected a particular intraLATA carrier.

10. All local exchange carriers who are parties to this proceeding shall assign existing customers who fail to choose an intraLATA carrier to their interLATA carrier, while assigning new customers to no intraLATA carrier until they have chosen one.

11. Within 30 days of the date of this Order all local exchange carriers who are parties to this proceeding shall file any revised tariff pages necessary to comply with the provisions of this Order.

12. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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