

ISSUE DATE: March 6, 1997

DOCKET NO. P-5321/NA-96-170

ORDER APPROVING INTERIM TARIFF/PRICE LIST AND ACCESS SERVICES
TARIFF, AS MODIFIED

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of MCImetro
Access Transmission Services, Inc. for a
Certificate of Authority to Provide Local
Exchange Telecommunications Services,
Local Resale, Private Line and Switched and
Special Access Services

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PROCEDURAL HISTORY

On June 24, 1996, the Commission issued an Order in this matter granting MCImetro Access Transmission Services, Inc. (MCI or the Company) a conditional certificate of authority to provide local exchange, local resale, private line and switched and special access services subject to the Commission's approval of interconnection agreements and Company tariffs and the Commission's local competition rules in Docket No. P-999/R-95-53, when completed. Additionally in that Order, the Commission recognized that under Minn. Stat. § 237.16, subd. 10, it has the authority to establish a temporary interconnection arrangement pending the completion of the Commission's local competition rulemaking.

On November 6, 1996, the Commission issued its ORDER APPROVING INTERIM INTERCONNECTION ARRANGEMENT WITH MODIFICATIONS in this matter. In its Order, the Commission exercised its statutory authority to determine an appropriate interim interconnection arrangement between MCI and U S WEST Communications, Inc. (USWC), pending adoption of the Commission's local competition rules.

On December 2, 1996, the Commission issued its ORDER RESOLVING ARBITRATION ISSUES AND INITIATING A US WEST COST PROCEEDING in In the Matter of the Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc. Pursuant to Section 252 (b) of the Federal Telecommunications Act of 1996, Docket No. P-442, 421/M-96-855, P-5321, 421/M-96-909 and P-3167, 421/M-96-729 (December 2, 1996).

On December 12, 1996, MCI submitted a proposed tariff/price list and a proposed access services tariff for the Commission's review and approval.

On January 15, 1997, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments on MCIIm's interim tariff filing.

On January 16, 1997, the Minnesota Department of Public Service (the Department) and US WEST Communications, Inc. (USWC) each filed comments on MCIIm's interim tariff filing.

On January 23, 1997, USWC filed reply comments on the MCIIm tariff filing.

On January 28, 1997, MCIIm filed comments in reply to the comments of interested parties.

On January 30, 1997, MCIIm filed revised tariff pages for identified tariff pages in the December 12, 1996 filing.

On February 10, 1997, MCIIm filed a letter with the Commission indicating its agreement to a 15 day extension (to February 25, 1997) of the 60 day effective date provided under Minn. Rules 7829.1300.

On February 11, 1997, MCIIm filed additional revised tariff pages.

On February 12, 1997, the RUD-OAG and the Department filed letters clarifying their positions with respect to the revised tariff pages filed by MCIIm.

The Commission met on February 20, 1997 to consider this matter.

FINDINGS AND CONCLUSIONS

A. Nature of MCIIm's Filing

In its December 12, 1996 filing, MCIIm stated that its interim tariff filing was a miscellaneous tariff filing made under Minn. Rules, Part 7829.1300. According to MCIIm, this meant that the Commission must act upon the filing within 60 days.

MCIIm has misconstrued the purpose and effect of the rule, which creates no such 60 day deadline on the filing. Language referring to a 60 day timeline for decision appears in Minn. Rules, Part 7829.1300, Subd. 2 relating to service requirements. Subdivision 2 delineates two categories of miscellaneous filings for purposes of service:

- The first category of filings is composed of 1) each miscellaneous tariff filing on which commission action is required within 60 days and 2) each price list filing increasing the price of a competitive service. The rule simply directs the utility making such a filing to serve copies of such filings upon the persons on the applicable service list, on the Minnesota Department of Public Service (the Department) and on the Residential Utilities Division of the Office of the Attorney General (RUD-OAG).

- The second category contains all other filings. A utility making any filing not specified in Category 1 is permitted to serve a one-page summary of the filing on persons on the applicable general service list.

In short, the legislature has not established a 60 day decision deadline for MCI's tariff filing and Subdivision 2 of the Commission's rule does not adopt a 60 day decision deadline for all miscellaneous filings. In fact it does not impose a 60 day decision deadline for **any** filing not already subject to such a deadline by statute. Subdivision 2 simply prescribes the service requirements for utilities making certain filings, including those filings that the Commission, by terms of a statute, is required to decide within 60 days or fewer.

MCI's tariff filing is not subject to a statutory 60 day decision deadline and therefore, but for the history of this docket, it would have been appropriate to view MCI's filing as one of the miscellaneous filings that are not subject to a statutory decision deadline. If MCI's filing were viewed as such, the timetable for initial comments, reply comments, etc. would be as prescribed in Minn. Rules, Part 7829.1400.

In view of the history of this matter, however, the Commission finds that it is more appropriate to view MCI's filing as made in compliance with the conditions placed on the certificate of authority. As noted above, that Commission's June 24, 1996 Order granted MCI a Conditional Certificate of Authority, i.e. subject, for example, to the Commission's approval of tariffs that the Company would have to file for Commission approval. MCI's December 12, 1996 tariff filing, then, was essentially called for in the Commission's June 24, 1996 Order and hence is properly viewed as a compliance filing.

On a related issue, since the MCI filing is not viewed as a miscellaneous filing pursuant to Minn. Rules, Part 7829.1300, the comment period timelines of Minn. Rules, Part 7829.1400 do not apply to the filing and any question of varying the timelines of that rule to accept the comments of the RUD-OAG, the Department, and USWC does not arise.

B. The Merits of MCI's Interim Tariff Filing

MCI's proposed tariff is the first such tariff to be filed by a Competing Local Exchange Company (CLEC) in Minnesota. It has, accordingly, received appropriately intense scrutiny in a short period of time. The Commission takes its statutory responsibility for promoting the development of healthy and fair local competition in Minnesota seriously¹ and appreciates the assistance by the participating parties in analyzing a complex filing that will have, despite its limited scope and interim status, a potentially significant impact upon the development of local competition in Minnesota.

The Department, the RUD-OAG, and USWC have all filed extensive comments on MCI's proposed tariff and MCI has filed two sets of revised tariff pages in response to some of the concerns raised by the Department and the RUD-OAG. Concerns warranting specific

¹ Minn. Stat. 237.16, subd.1 (1996).

discussion are as follows:

1. Basis for MCIIm's Proposed Rates

USWC objected that MCIIm provided no information about how it developed its rates nor a justification for the reasonableness of its proposed rates. MCIIm responded that in competitive markets, prices are determined by the demands of the market place. MCIIm stated that its interim tariff reflects this market-based pricing philosophy in that its prices are set in relation to USWC's rates and noted that its prices are, in general, less than USWC's rates.

While it is premature, in the Commission's view, to accept MCIIm's characterization of the local telephone market as competitive, it does appear to the Commission that MCIIm's announced approach to rate-setting is reasonable. USWC's arguments that MCIIm is required, by terms of various statutes, to provide cost studies will be addressed elsewhere in this Order.

2. Use of ICB Pricing

USWC objected that MCIIm's proposed use of individual case based (ICB) pricing for special access and parts of its switched access services is improper. USWC asserted that use of ICB pricing provides MCIIm with virtually unlimited flexibility as to rates, terms, and conditions. USWC complained that other LECs have not been provided with such flexibility.

The Commission finds that USWC is not unfairly disadvantaged by MCIIm's proposal in this regard and will approve it. During the start-up phase of local competition, it is not unreasonable to treat CLECs differently in some respects from USWC, the established LEC with market power.² This is one area in which the CLEC will be allowed somewhat greater flexibility, at least for the present.

3. Inapplicability of Minn. Stat. § 237.60, subd. 4

USWC argued that MCIIm's failure to provide cost studies in support of its proposed rates violated Minn. Stat. § 237.60, subd. 4 (1996).

The Commission finds that the cited statute does not apply to MCIIm's filing because local service (which is the subject of the Company's proposed tariff) is not currently classified as a "competitive service" as that term is defined in Minn. Stat. § 237.57, subd. 2(1996) and used in Minn. Stat. § 237.60, subd. 4 (1996). The reclassification process is prescribed statute: Minn. Stat. § 237.59, subs. 2-8 (1996).

² As the Commission noted in approving West Central Transport Group LLC's proposed use of individual case based (ICB) pricing: "...the extreme difference in market power between West Central and US WEST justifies different pricing forms." See the Commission's April 20, 1995 ORDER GRANTING CERTIFICATE OF AUTHORITY AND REQUIRING FILINGS in Docket No. P-5133/NA-94-1183 at page 3.

4. Inapplicability of Minn. Rules, Part 7810.8500

USWC also argued that MCI's failure to provide cost studies in support of its proposed rates violated Minn. Rules, Part 7810.8500. The cited rule does not apply to MCI and its proposed local service offerings. Minn. Rules, Part 7810.8500 imposes certain filing requirements (including an incremental cost of service study) on "telephone companies" when they propose to offer "new services". MCI is a "telecommunications carrier" as defined in Minn. Stat. § 237.01, subd. 6 (1996) not a telephone company as defined in Minn. Stat. § 237.01, subd. 2 (1996) and is not, therefore, a "telephone company" within the meaning of the cited rule.

Note that Minn. Stat. 237.16, Subd. 13 does not subject MCI to rules applicable to telephone companies. Subd. 13 states that local services provided by telecommunications carriers are subject to "this chapter" in the same manner as those local services of a telephone company regulated under "this chapter", i.e. Chapter 237 of Minnesota statutes, with specified limited exceptions.³ The statute did not take the same step with respect to the rules that the Commission has adopted for telephone companies.

In addition, the cited rule refers to "new service offerings". The services that MCI has proposed to offer are not "new service offerings" within the meaning of the rule notwithstanding the fact that MCI has not offered these services previously in Minnesota. The services that MCI has proposed to offer are standard local services and not "new offerings" within the meaning of the rule.

5. Inapplicability of Minn. Stat. § 237.63 (1996)

At the hearing on this matter, USWC argued that if Minn. Stat. 237.60 (1996) did not apply to MCI because MCI's local services are not deemed competitive, then Minn. Stat. § 237.63 (1996) would certainly apply and require MCI to support its proposed rates with cost data. The Commission disagrees.

The Commission notes that Minn. Stat. § 237.63 (1996) applies to a telephone company "whose general revenue requirement is determined under Minn. Stat. § 237.075." MCI is not such a company and as a consequence MCI has no obligations or rights under that statute.

Further, Minn. Stat. § 237.16, Subd. 13 does not serve to subject MCI's filing to the obligations or rights under that statute because Minn. Stat. § 237.16, Subd. 13 specifically excepts telecommunications carriers providing local service from "rate-of-return regulation". In so

³ Subd. 13 subjects local services provided by a telecommunications carrier to the requirements imposed on telephone companies by Chapter 237 (statutory requirements) with certain limited exceptions: telecommunication carriers providing local service are not subject to 1) the Minn. Stat. § 237.22 (the depreciation statute), 2) rate-of-return regulation under 237.075 and 3) earnings investigation under 237.081. See April 20, 1996 Order in Docket No. P-5133/NA-94-1183 at page 12.

doing, Minn. Stat. § 237.16, Subd. 13 excludes MCIIm by definition from the scope of Minn. Stat. § 237.63 (1996).

Moreover, Minn. Stat. § 237.63 (1996) does not apply to **all** telephone companies but only those that meet a second criterion, i.e. "...whose general revenue requirement is determined under Minn. Stat. § 237.075." So even if, by reason of Minn. Stat. § 237.16, Subd. 13, MCIIm stood before Minn. Stat. § 237.63 (1996) as a "telephone company" it still would not meet the second criterion because its revenue requirement is not determined under Minn. Stat. 237.075 (1996).

Accordingly, the Commission finds that MCIIm can not avail itself of the benefits nor be subject to the requirements of Minn. Stat. § 237.63 (1996).

6. Limitation of Service to Business Customers

USWC noted that MCIIm's tariff also requires that all orders for service from its potential customers be in writing. USWC objected that this provision may operate to limit MCIIm's customer base to the more profitable, larger businesses. The Department and the RUD-OAG also expressed concern about MCIIm's limitation of service to business customers.

MCIIm strongly defended its limited offering, arguing that as the first competitor to enter what has long been a monopoly market it must pursue a "phased entry" approach. MCIIm asserted that its limited offering is reasonable because it currently lacks the necessary interfaces with USWC to establish the billing systems, operational support systems, and customer service support systems to meet the needs of residential customers.

In addition, MCIIm stated that it lacked two other critical tools needed to serve residential customers: wholesale pricing and the ability to purchase unbundled network elements. While these elements are coming into place, MCIIm noted that the interim tariff will allow MCIIm to provide service using its own facilities. MCIIm stated that it plans to begin offering resold residential service by the end of 1997.

Finally, MCIIm denied any intent to "cream skim" and asserted that its phased approach will enable it to be a stronger competitor, thus benefiting all Minnesota telephone service consumers.

The Commission's goal is to promote fair and reasonable competition for local exchange services consistent with its concerns for consumer protection from monopolistic practices and universal service. This involves finding ways to neither unduly burden nor unduly privilege the incumbent LEC and would-be competitors. MCIIm's proposal, which involves a substantial limitation on service, raises substantial concern. The Commission would certainly would not countenance a protracted interim phase, characterized by the scope of service limitation and other tariff terms as established in this Order.

In this case, however, given the circumstances presented by MCIIm and its announced plan to move through this interim phase expeditiously and begin residential service by the end of 1997, the Commission will approve the Company's proposed service limitation for the interim period.

7. Promotions

MCIm's tariff regarding promotions indicates that promotions may be offered and "may be limited to the duration, the dates and times of the offerings and locations where the offerings are made." It further details plans for several promotions in Minnesota.

USWC objected that MCIm's proposed promotions tariff did not allude to the statutory cost study requirement for promotions and was not accompanied by any cost information for the rates being waived or costs of services being promoted, as required by Minn. Stat. § 237.626 (1996).

Minn. Stat. § 237.626 (1996) in pertinent part:

....The service being promoted must have a price that is above the incremental cost of the service, including amortized cost of the promotion. A promotion may take effect the day after the notice is filed with the commission. The notice must...include cost information demonstrating that the revenue from the service covers incremental cost, including the cost of promotion.

The Commission agrees that this statute applies to any promotions proposed by MCIm.⁴ However, the issue before the Commission at this time is the adequacy of the MCIm's proposed tariff language. The fact that a tariff does not recite all the applicable statutory requirements does not mean that those requirements do not apply nor does it render the tariff defective.

Therefore, while it may be desirable for a tariff to incorporate all the relevant statutory requirements, it is not necessary for the Company's tariff to do so. In sum, the Company's failure to include in its promotions tariff reference to the fact that it must file a cost study as part of its notice at least one day before the promotion goes into effect (per Minn. Stat. § 237.626) is not a defect that requires correction.

Questions raised regarding the Company's compliance with the requirements of Minn. Stat. § 237.626 (1996) are appropriately addressed in another proceeding.

8. Blocking Access to 900 and 976 Service Providers

The Department and the RUD-OAG raised concerns over MCIm's proposed tariff language regarding blocking access to 900 and 976 service providers with whom MCIm has not entered into a billing arrangement. The parties expressed concern regarding the potential for discrimination and unreasonable limitation of service. While expressing concern, the Department and the RUD-OAG recommended that the tariff be approved on an interim basis, stating that the issues would need to be resolved at a later point with a more comprehensive

⁴ Although the statute, on its face, applies only to telephone companies, it is made to apply to telecommunications carriers providing local service (such as MCIm) by Minn. Stat. § 237.16, Subd. 13 (1996).

approach.

The Commission shares the concerns raised by the Department and RUD-OAG and anticipates a fuller examination of these issues at a future date, possibly upon examination of MCI's permanent tariff filing.

9. Bill Presentation of Interstate Calling Charge

The Department and the RUD-OAG objected to MCI's proposal to add a line item on its customers' bill, a \$5.26 network access for interstate calling charge. The parties expressed the concern that the proposal was misleading in that the line item, as presented, would erroneously appear to customers to be the equivalent of the subscriber line charge appearing on USWC's customer bill. The parties clarified that their concern was that customers may be led to believe that the \$5.26 network access for interstate calling charge was simply a pass-through item of a charge imposed on MCI by the Federal Communications Commission (FCC), and hence unavoidable as in the nature of a tax, whereas the \$5.26 (unlike the subscriber line charge appearing on USWC's customer bill) is a charge that MCI has chosen to impose to recover its costs.

MCI responded that it simply wished its bills to be customer friendly and afford the customers an opportunity to compare the savings they were receiving as MCI customers. MCI agreed with the Department and the RUD-OAG to make appropriate modifications to accommodate their concern.

The Commission is concerned about the existence of any misleading aspects of MCI's customer bills. Any misrepresentation to consumers is a disservice to them, of course, and if allowed by the Commission would give an improper advantage to MCI.⁵ In this case, the Commission will require MCI to modify its tariff language to address the concern raised by the Department and the RUD-OAG and, accordingly, will approve the tariff appropriately modified to eliminate the identified problem.

10. Effective Date

MCI requested an effective date of February 25, 1997 for their interim tariff. No party objected to that proposed effective date and the Commission finds that it is reasonable. Accordingly, the Commission will establish February 25, 1997 as the effective date for the tariff.

In so doing, the Commission clarifies that no portion of the tariff that must be revised to comply

⁵ The Commission clarifies that there is nothing in this record to indicate that MCI intended any misrepresentation and the Company has indicated good faith to correct it. The Commission is taking this opportunity, however, to underline its view that any intentional misrepresentation to consumers is an example of improper competition that the Commission will not tolerate.

with the decisions made in this Order shall be placed into effect prior to the actual submission of such revised tariff sheet. This clarification is required by Minn. Stat. § 237.74, Subd. 2 (1996) which requires telecommunications carriers to place on file with the Department either a tariff or price list for each service on or before the effective date of the tariff or price. A similar requirement is imposed upon telephone companies by Minn. Stat. § 237.07, Subd. 1 (1996) and made applicable to MCI by terms of its Conditional Certificate of Authority.⁶

C. Revisions

1. Proposed by the Department

The Commission has reviewed the following tariff revisions raised by the Department and finds that they are reasonable:

- The tariff should be revised to reflect that in no event should a deposit exceed an estimated two months gross bill or existing two months bill to be in compliance with Minn. Rules 7810.1600. (Tariff page 41, 2.5.5.1.1)
- The word "business" should be deleted because Minn. Rules 7810.1600 requires that interest be paid on all deposits over \$20 whether the customer is a business or residential customer. (Tariff p. 42, 2.5.5.4)
- The phrase "or any violation of any applicable law or regulation" should be omitted because Minn. Rules 7810.1900 does not permit discontinuation of service without notice for violation of any applicable law or regulation. (Tariff, p. 43, 2.5.6.7)
- Tariff page 44, 2.5.6.8.1 should be stricken or modified because under Minn. Rule 7810.2300, a minimum of five days notice is required to terminate service for nonpayment. MCI's proposed tariff would terminate service immediately.
- At tariff page 48, 2.6.2, regarding when credit allowances will be made, subp. (b) should be omitted and subp. (a) should be revised to be in compliance with Minn. Rules 7810.1400.
- MCI should add a description of what it means by "Minneapolis Zone 1,3,7,8,9" and "St. Paul Zone 3,4,5,6." (Tariff page 53, 3.1.1)
- The proposed "Network Access for Interstate Calling charge" of \$5.26 should be eliminated as a separate charge because it is misleading. mirrors the end user common line charge of \$5.26 imposed by the FCC on ILECs but does not necessarily serve the

⁶ In its April 20, 1996 Order Granting MCI its conditional certificate of authority, the Commission noted that pending adoption of the Commission's rules governing local competition MCI is subject to the provisions of Minn. Stat. § 237.16, subd. 13. See April 20, 1996 Order in Docket No. P-5133/NA-94-1183 at page 12.

same purpose. The \$5.26 charge should not be listed separately, but be included as part of the total monthly rate to avoid misleading customers.

- The Department stated that MCI has vastly simplified the application of the MCI Local Services Investor Promotion. The Department stated, however, that the credits under this promotion should be defined and the calculation of credits should be clearly explained. MCI also noted that this promotion ends 90 days from the effective date of the tariff. The tariff should clarify 1) that customers should enroll within the first 30 days of the effective date of this tariff and 2) that those customers that MCI cannot serve them immediately will be served at the promotion rate as soon as MCI is able to serve them. The Department stated that MCI should explain more clearly the end period of this promotion (90 days from the effective date). Tariff page 82.1, 4.4.

2. Proposed by the RUD-OAG

The Commission has reviewed the following tariff revisions raised by the RUD-OAG and MCI and finds that they are reasonable:

- Section 2.1.4.6 still indemnifies MCI for MCI's actions and should be deleted.
- Section 2.1.6.1 now establishes a cap on liability consistent with Section 2.1.4.2. However, by stating that MCI does not guarantee availability, the RUD-OAG argues that it is difficult to see how liability for delays could be incurred. The RUD-OAG recommends modifying the last sentence of 2.1.6.1 to read, "The Company's liability for delay in availability by any given date shall be limited by Section 2.1.4.2."
- The second sentence of Section 2.5.1, which calls for objections to charges to be made within 30 days, should be deleted.
- The first sentence of 2.5.3 should be deleted because Commission rules place no limitation on notification regarding disputed bills.
- Section 2.5.6.1 should be limited to nonpayment for local services and similar to the nonpayment provision of the disconnection rules. The RUD-OAG suggests the following wording: "Upon failure of the customer to pay a bill for local service when due, the Company may, by giving five days prior written notice to the customer, discontinue or suspend service without incurring any liability." Section 2.5.6.5 should be deleted and replaced with 2.5.6.8(b) but modified to include a five-day notice clause. Sections 2.5.6.8(d) and 2.5.6.8.1, 2 and 3 should also be deleted as they are either not covered by the rule or are inconsistent with other provisions.
- Section 3.1.2.2 should be amended to include 900 blocking as an optional feature pursuant to FCC rule 64.1508.
- The RUD-OAG recommended that Section 3.1.2.3.3 should list 900 blocking with a zero recurring charge, consistent with FCC regulations. MCI's waiver of the per-call charge

for the restricted customer group should be the equivalent of per-line blocking at no charge.

- The RUD-OAG objected to MCIIm adding a network access for interstate calling charge of \$5.26. The RUD-OAG noted that this appears to be the equivalent of a subscriber line charge. The RUD-OAG stated that it should be made clear to customers that this charge is part of the total monthly rate and does not constitute a pass-through of an FCC imposed charge.
- The RUD-OAG stated that the revised tariff pages filed by MCIIm still left ambiguity regarding the exemption from limits of liability for willful misconduct. The RUD-OAG recommended that this provision should be interpreted as overriding any areas where restrictions on such liability can be inferred. The RUD-OAG recommended that the first sentence of Section 2.1.4.2 be modified to state, "Notwithstanding any provision in this tariff to the contrary."

D. Commission Action

Based on its independent review and the foregoing analysis and, the Commission concludes that MCIIm's proposed tariff, revised as requested by the Department and the RUD-OAG, is satisfactory. Accordingly, the Commission will approve tariff pages that reflect the revisions that the RUD-OAG and the Department have requested and the Commission's resolution of the issues discussed in this Order.

ORDER

1. The interim tariff/price list and access service tariff proposed by MCIIm, revised as recommended by the Department and the RUD-OAG, is approved, effective February 25, 1996; provided that any section of the proposed tariff that must be revised to comply with this Order shall not be placed into operation prior to the filing of such revised section.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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