

ISSUE DATE: October 29, 1997

DOCKET NO. P-421/EM-97-1325

ORDER FINDING WITHDRAWAL OF INITIAL PROPOSAL AND PROVIDING FOR
FILING REVISED PLAN

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Gregory Scott
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Introduction of
Better Dealsm Optional Calling Plan as
Market Trial in Minnesota

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PROCEDURAL HISTORY

On September 2, 1997, U S WEST Communications, Inc. (USWC) submitted a proposal to introduce the Better Dealsm Optional Calling Plan through a Market Trial for business and residence customers with a proposed effective date of September 15, 1997 and ending date of December 31, 1998.

Key elements of the plan as proposed were:

Price

For unlimited toll usage on intraLATA dial station-to-station calls the monthly rates would be

Residential customers	\$ 49.00
Business Customers	\$149.00

Product Description

- Only customers having lines at single customer premises and billed to one telephone number would be eligible to subscribe to this plan.
- Trunks, inward only, 911 services, Public Access Lines, and Internet service providers would be prohibited from subscribing to the Plan.
- To be eligible for this Plan, a subscriber must be an existing customer with established retail service for a minimum of six months.
- A customer's actual retail intrastate toll use during two most recent full billing months must not exceed \$200.00.
- Customers would be able to enroll in the trial promotion only within 60 days of the effective date of the tariff.

On September 10, 1997, the Minnesota Department of Public Services (the Department) submitted comments recommending that the Commission approve the proposed plan.

On September 12, 1997, AT&T Communications of the Midwest, Inc. (AT&T) submitted

comments and a petition to intervene. AT&T argued that Better Deal was priced below cost and imposed unreasonable and anticompetitive restrictions on its resale in violation of state and federal law. Specifically, AT&T objected to 1) the requirement that end user customers must have been existing customers of the reseller, 2) limiting the enrollment period to the first 60 days of a much longer benefit period.

On September 29, 1997, Firstcom, Inc. (Firstcom) submitted comments. In addition to objecting to the two program restrictions cited above by AT&T, Firstcom argued that in limiting the availability of Better Deal to users who have \$200 or less in their previous two months of use unreasonably discriminated against large volume users in violation of Minn. Stat. § 237.60, subd. 3.

On October 7, 1997, the Department submitted reply comments.

On October 13, 1997, USWC submitted reply comments.

The Commission met on October 21, 1997 to consider this matter.

FINDINGS AND CONCLUSIONS

The statutory framework for reviewing changes in service subject to emerging competition is flexible and expeditious but does not require the Commission and the various interested parties to guess at exactly what changes are being proposed or to respond to substantial last-minute alterations. See Minn. Stat. § 237.60.

One week before the hearing, USWC filed Reply Comments indicating significant changes in its proposal: shortening the trial period and offering wholesale pricing. Then, at the hearing itself, the Company verbally offered additional major changes: abandoning several major customer eligibility restrictions. To proceed on this basis would be unfair to the Commission and the interested parties and is not contemplated by the statute.

The Company's proposed changes are significant:

- In its Reply Comments filed October 13, 1997, USWC indicated that it would modify the Better Deal offering in two respects. USWC would 1) modify the period of the trial, limiting it to nine months, and 2) change the pricing of Better Deal to offer it to resellers at a wholesale rate. USWC denied that the restrictions on eligible customers objected to by AT&T and Firstcom imposed unreasonable restrictions on resale.
- At the hearing on this matter on October 21, 1997, USWC further modified its proposal in oral comments before the Commission. USWC indicated that it would abandon the restrictions on customer eligibility challenged by AT&T and Firstcom. Specifically, USWC stated that it would not impose against resellers the restrictions that it planned to impose on itself, i.e. the 60 day eligibility period, the \$200 ceiling, and the 6 months use requirement.

To illustrate the significance of the Company's changes, the Commission notes that at least two of the changes made at the last minute (changing customer eligibility requirements) significantly devalued the Department's earlier finding (based on its review of the plan as

initially proposed) that the plan was priced above cost.¹

Due to these significant changes in the Company's proposal, the Commission finds that USWC is proposing a pricing plan that is different in substance from the plan it initially proposed. In short, the Company is no longer proposing the plan that it initially filed. The Company has, in essence, abandoned (withdrawn) its initial filing and asked the Commission to consider something quite different. In these circumstances, the statutory timetable for a decision on the initial proposal (60 days from the filing of that proposal) no longer applies.

Finally, the Commission notes that the changes in customer eligibility throw the Company's claim that the service is priced above cost into severe question. The Department's finding that the plan was priced above cost was based on a substantially different plan. Further, as noted by USWC itself in its Reply Comments, the now abandoned customer eligibility restrictions were "...important in the effort to keep the ARPM above the imputed price floor."

Because the Company has effectively withdrawn its initial proposal and not finalized its new proposal in writing it is unnecessary and premature to consider whether the Company's new proposal is "potentially contrary to the public interest" and therefore subject to suspension and further investigation.

ORDER

1. USWC's Better Deal Optional Calling Plan filed September 2, 1997 is deemed withdrawn.

¹ Prior to the hearing on this matter, USWC itself stressed in the important relationship between the customer restrictions it initially proposed (and later abandoned at the hearing) and "...the effort to keep the ARPM above the imputed price floor." USWC Reply Comments filed October 13, 1997 at page 2.

2. If USWC wishes to seek to implement a new Better Deal plan, as verbally altered in the proceeding to date or otherwise, it shall commit such plan to writing and file it with the Commission, together with proposed tariffs for the plan and such cost information and other supporting materials as are required by law or deemed appropriate by the Company.
3. The other parties to this matter (the Department, AT&T, and Firstcom) are hereby authorized to submit information requests to USWC regarding its new proposal.
4. Within ten (10) working days of the Company's filing, all parties shall file their comments regarding this matter.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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