

ISSUE DATE: June 11, 1997

DOCKET NO. P-421/EM-96-1514

ORDER DISMISSING PETITION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Don Storm

Chair
Commissioner
Commissioner
Commissioner

In the Matter of USWC's Petition to Redefine
LATA Boundaries in the State of Minnesota

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PROCEDURAL HISTORY

On November 22, 1996, U S WEST Communications, Inc. (USWC) filed a request that the Commission redefine the toll dialing parity requirement by adjusting the LATA boundaries in Minnesota. Specifically, USWC requested that the Commission consolidate the five LATAs into one, such that intraLATA calling and intrastate toll calling become synonymous.

Between January 2 and 13, 1997, the Commission received comments from the following parties: National Teleservice Inc., America's Carriers Telecommunications Association (ACTA), GTE, Telecommunications Resellers Association (TRA), Sprint, LCI International Telecom, Inc., Minnesota Independent Coalition (MIC), MFS, AT&T, MCImetro, and the Minnesota Department of Public Service (Department). These parties opposed USWC's petition, arguing that USWC's petition has no merit and requesting the Commission to dismiss the matter.

On January 13, 1997, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) noted that paragraphs 5 and 37 of the FCC's Second Report and Order appear to allow states to implement toll dialing parity on the basis of state, rather than LATA, boundaries and suggested that the Commission may have legal authority to redefine LATA boundaries to make Minnesota a one-LATA state.

On February 3, 1997, reply comments were filed by USWC, MFS, AT&T, Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG), MCImetro, and the Minnesota Department of Public Service (Department).

Between January 31, 1997 and February 5, 1997, the Commission received public comments from Redwood Area Development Corporation, East Central Minnesota Educational Cable Coop, Southeastern Libraries Cooperating, Bennett Office Products, Freshwater Education District, and the law firm of Kraft, Walser, Nelson, Hettig & Honsey. They agreed that USWC's petition will aid consumers in getting cost-effective and timely access to improved telecommunications services. Most expressed the belief that USWC's petition will give them

lower intraLATA rates than what is currently provided.

On May 20, 1997, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Overview

Action by the Federal Communications Commission (FCC) subsequent to USWC's filing this matter and the receipt of numerous comments and reply comments has rendered further consideration of USWC's filing unnecessary.

B. FCC Ruling

On March 4, 1997, the Competition Policy Institute (CPI) and the Department filed a petition requesting the FCC to issue a Declaratory Ruling to clarify that the Second Report and Order did not delegate to the states the FCC's authority to approve changes in the LATA boundaries. The Department and CPI stated that U S WEST misconstrued the statements solely intended to give states the choice of implementing the 1+ toll dialing parity requirement on a statewide basis or on a LATA-wide basis, but with all the LATA restrictions remaining unchanged.

On April 21, 1997, the FCC released its Order (DA 97-767) granting the Petition requested by CPI and the Department. The FCC concluded that it did not and could not delegate its authority over the definition of LATA boundaries to the states. The FCC ruled that Congress vested exclusive authority to the FCC to define LATA boundaries pursuant to the Telecommunications Act of 1996, and transferred authority from the U. S. District Court "any conduct or activity" previously subject to the AT&T Consent Decree. The FCC ruled that it has the sole authority over the administration of LATA boundary establishment and to any modification of LATA boundaries as they existed on February 8, 1996.

The FCC explained that USWC's proposal would circumvent Section 271 of the Act, and would improperly permit the BOCs to conduct activities barred by the AT&T Consent Decree, but without requiring FCC approval of their Section 271 application. The FCC indicated that if USWC had made its request directly to the FCC, it would have been prohibited under the restrictions of Section 10(d) from granting the request until such time as the Company had entirely satisfied the requirements of Section 271. Moreover, the FCC stated that section 10(d) prohibits the FCC from forbearing to apply the requirements of Section 271 until it determines that those requirements have been fully implemented.

C. Commission Action

The Commission will take administrative notice of the FCC Order in DA 97-767. The Commission will dismiss USWC's petition because it is clear, in light of the FCC's Order, that the Commission lacks jurisdiction to take the requested action. The Commission will disregard parties' comments on other issues as not necessary or irrelevant at this time.

ORDER

1. U S WEST Communications, Inc.'s petition requesting the Commission to redefine the toll dialing parity requirement by adjusting the LATA boundaries in Minnesota is hereby dismissed for lack of jurisdiction.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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