ISSUE DATE: July 10, 1997

DOCKET NO. P-421/C-96-968

ORDER REQUIRING TARIFF FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of a Formal Complaint by McLeod Telemanagement, Inc. Against US WEST Communications, Inc. Regarding the Sale of Centron/Centrex Services

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PROCEDURAL HISTORY

On August 20, 1996, McLeod Telemanagement, Inc. (McLeod) filed a complaint alleging that US WEST Communications, Inc. (US WEST) was violating Minnesota's local competition statutes by imposing discriminatory and anti-competitive terms on McLeod's purchase and resale of Centron services.[1]

On October 24, 1996, the Commission issued its ORDER REQUIRING ANSWER TO COMPLAINT. In that Order the Commission found that there were reasonable grounds to investigate McLeod's allegations and required US WEST to submit an answer to the complaint.

On November 13, 1997, US WEST filed its answer.

Between December 16, 1996, and May 12, 1997, comments and reply comments were filed by McLeod, US WEST, and the Department of Public Service (the Department).

On June 19, 1997, the matter came before the Commission for consideration.

[1] Since the filing of the complaint, McLeod Telemanagement has received Commission authorization to change its name to McLeodUSA Telecommunications Services, Inc.

FINDINGS AND CONCLUSIONS

I. THE ISSUES RAISED

McLeod's complaint alleges two things: 1) US WEST is refusing to let McLeod customers keep their pre-existing telephone numbers, without cumbersome rerouting, when they sign to purchase resold Centron service from McLeod; and 2) US WEST is charging McLeod Centron customers higher directory assistance rates than it charges its own customers. McLeod claims these actions violate Minn. Stat. §§ 237.09, subd. 2; 237.121; 237.60, subd. 2(g); and 237.60, subd. 3.

A. Number Retention

"Number portability" or "end user number continuity," when used in this proceeding, refers to the retention of a customer's original telephone number when that customer begins purchasing US WEST's Centron services through McLeod, a reseller of the service.

The parties agree that there are two main methods of achieving number portability in the Centron resale situation. US WEST currently offers an Automatic Call Transfer (ACT) service, which allows customers to keep their pre-existing telephone numbers when they purchase resold Centron service. For each telephone number, the underlying carrier (US WEST) sets up an ACT line that forwards calls made to the original number over to the newly assigned number.

Alternatively, US WEST currently "chips in" its own customers who convert to or from Centron service. Using this method, US WEST allows its customers to retain their original telephone numbers without any forwarding of telephone calls between old and new numbers. In comments dated March 24, 1997, US WEST stated that it has been working on the "chip-in" function as a replacement for the ACT service. US WEST stated that it "...is willing to introduce the "chip-in" capability [for resold Centron service] and believes that it can do so within 90 days." Comments at p. 2.

B. Directory Listing

Under US WEST's Centron tariff, approved in 1994, US WEST charges a $10.00 nonrecurring fee per directory listing for either US WEST customers or purchasers of resold Centron service. US WEST charges recurring fees of $1.50 per month per listing for its Minneapolis, St. Paul, and Duluth customers; it charges $0.70 per month per listing for its Minnesota customers outside these communities. US WEST charges recurring fees of $10.30 per month for reseller end users in Minneapolis, St. Paul, and Duluth; outstate reseller customers are charged $8.20 per month per listing.

II. COMMENTS OF THE PARTIES

A. McLeod

McLeod stressed the importance of number portability in the resale of Centron services. According to McLeod, business customers must have the ability to retain their telephone numbers in order for competition in the provision of Centron service to truly exist.

McLeod noted that the FCC's ongoing rulemaking regarding number portability will not resolve issues of number portability until at least 1998. In the meantime, underlying service providers who discriminate against reseller customers by offering inferior number transfer methods, or higher prices for the transfer, are failing to follow the competitive requirements of the Federal Act and the Minnesota statutes governing local competition.

McLeod stated that US WEST's ACT service is an unsatisfactory means of number retention for a number of reasons:

- it causes lengthy service disruptions during installation
- it does not always transfer the end user's CLASS information, and may transmit the reseller's Caller ID information instead of the end user's Caller ID read-out
- it requires the use of two numbers per ACT customer--the original number being retained, and the number assigned to the reseller's Centron block
- if a customer switches to McLeod from a reseller that does not provide ACT, there is no way to link the customer's original number to McLeod's number in its Centron block
- in some instances, ACT is not compatible with voice mail

McLeod asked the Commission to require US WEST to provide competitively neutral number portability at a charge equal to that offered US WEST's own customers.

McLeod also charged that US WEST's directory listing fees are discriminatory and anti-competitive. US WEST's tariffed prices were approved before both the federal government and the State of Minnesota developed policies promoting the development of competition in local exchange service. US WEST's own 1996 cost study fails to justify the price differentials between US WEST and non-US WEST end users.

McLeod asked the Commission to order US WEST to immediately terminate directory listing charges and to refund all such charges paid by McLeod since the date McLeod filed its complaint.

B. US WEST

US WEST asserted that McLeod is demanding preferential treatment at no extra charge.
US WEST stated that its use of the ACT service to transfer telephone numbers is adequate and appropriate. US WEST is willing to develop the "chip-in" method of number retention, but must be fairly compensated for each use of the functionality. To allow less would be to require US WEST's customers to subsidize McLeod's.

US WEST stated that there is no reason to revisit its tariffed directory listing rate for resold Centron services. The Commission approved the Company's directory listing charges in 1994, after careful and thorough consideration. US WEST further argued that its pricing is nondiscriminatory because the rate it charges McLeod would be offered to any other Centron reseller.

C. The Department

Although the Department originally recommended dismissal of the McLeod complaint, the Department revised its recommendation in its May 1, 1997 comments.

The Department stated that US WEST must avoid discriminatory treatment of its competitor by providing number portability to McLeod at the same price it offers its own Centron customers. US WEST should charge all customers, including its own, on the basis of demonstrated cost.

The Department further stated that US WEST must not charge McLeod customers more for directory listings than it charges its own customers, unless there is a cost-based reason for the discrepancy. Based on the cost data US WEST provided, the Department could find no justification for the difference in prices charged to McLeod and US WEST customers. The Department concluded that the price differential appeared discriminatory under federal and state law.

The Department recommended that the Commission require US WEST to provide McLeod customers nondiscriminatory pricing for number portability and directory listings.

III. COMMISSION ACTION

A. Number Retention

At the June 19, 1997 Commission meeting, US WEST confirmed its willingness to offer a "chip-in" tariff. The parties agreed to await the submission of that tariff, with supporting cost studies, before proceeding further with McLeod's complaint regarding this issue.

The Commission agrees that US WEST should submit a "chip-in" tariff and will so order. The chip-in method of number retention appears to be working well for US WEST's provision of Centron service and should be available to McLeod as a Centron reseller.
The major uncertainty regarding the "chip-in" function appears to be the appropriate pricing. When US WEST files supporting cost studies with its tariff, the parties will be able to comment regarding the pricing. After the comments have been considered, the Commission will decide if further action is required on this portion of McLeod's complaint.

B. Directory Listing

US WEST does not dispute that McLeod Centron end users are charged more for US WEST's Centron service than are US WEST's Centron end users.[2] US WEST states that the disparate treatment should continue for two reasons: 1) the tariffed rates were approved by the Commission; 2) US WEST is not discriminating because it is willing to treat other reseller customers the same as it treats McLeod.

The Commission disagrees with US WEST's arguments for the following reasons.

As US WEST stated, the Commission approved the Company's tariffed Centron rates in 1994 as part of the Centron investigation docket, P-999/CI-90-235. While only three years have passed since that tariff approval, profound changes have taken place in the telecommunications industry in that time. In 1995, the Minnesota legislature enacted sweeping legislation opening the local telephone market to competition. In 1996, the President signed into law the Telecommunications Act of 1996, with the stated purpose of providing the benefits of competition to U.S. citizens by opening all telecommunications markets to competition.

In the years from 1994 to 1997, the statutory and regulatory structure has changed from a solidly monopolistic environment to a framework for telecommunications competition. While local service competition is far from fully realized, the path to competition is now established and the players have entered upon it.

Given this context of radical change in the industry, the fact that the Commission approved a Centron tariff in 1994 cannot by itself justify continuation of the tariff.

Neither is the Commission persuaded by US WEST's second reason for unequal Centron rates for McLeod and US WEST end users: the fact that US WEST would offer the same rates to another reseller. In this particular case, logic demands a rate comparison between one set of US WEST Centron customers--its own end users-- and another customer--McLeod (who must either pass the charges on to its end users or absorb them--in either case, under the current rates, a competitive disadvantage). To ensure a truly competitive environment, as free as possible from barriers to entry, one must compare, on a case by case basis, the entities that are truly in a competitive situation. In this case, US WEST is not affording those entities--its own Centron end user customers, and McLeod as a Centron reseller customer--equal and nondiscriminatory treatment. This treatment is contrary to the nondiscrimination provisions of Minn. Stat. §§ 237.09 and 237.60, subd. 3 and should cease.

For these reasons, the Commission will require US WEST to file a tariff change for its Directory Listing Services, reducing the rates it charges Centron reseller customers to rates equal to those it charges its own Centron end user customers.

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[2] The difference in end user charges applies only to the initial directory listing; after the initial listing, charges for further listings are the same for McLeod and US WEST end users.

ORDER

1. Within 20 days of the date of this Order, US WEST shall file a "chip-in" service tariff. Interested parties should file comments on the tariff within 40 days of the date of the Order. Reply comments should be filed within a further 10 days.

2. Within 20 days of the date of this Order, US WEST shall file a tariff change for its Directory Listing Services, reducing the rates it charges Centron resellers to rates equal to those it charges its own Centron end users. The effective date of the price decrease shall be 40 days after the date of this Order.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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