

ISSUE DATE: March 11, 1998

DOCKET NO. P-488/TC-97-1814

ORDER FINDING COMPANY NOT SUBJECT TO REGULATION OR REGULATORY
ASSESSMENTS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of A Business
Conference Call, Inc. for a Determination It Is
Not a Telephone Company or a
Telecommunications Carrier

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PROCEDURAL HISTORY

On December 23, 1997 A Business Conference Call, Inc. (ABCC or the Company), a Minnesota corporation engaged solely in the provision of teleconferencing services, filed a verified petition seeking the following relief: (1) a determination that ABCC is not a “telephone company” or a “telecommunications carrier” under Minnesota law and is therefore not subject to regulation by this Commission; (2) a determination that ABCC is not subject to regulatory assessments under Minn. Stat. § 237.295; and (3) the cancellation of ABCC’s earlier registration as a telephone company under Minn. Stat. § 237.64.

On January 20, 1998 the Company and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) filed comments on the petition. The RUD-OAG urged the Commission to grant the petition on grounds that ABCC was neither a telephone company nor a telecommunications carrier and was more properly considered an information service provider under Minn. Stat. § 325F.692.

On January 22, 1998 the Department of Public Service (the Department) filed comments urging denial of the petition. The Department claimed that ABCC was engaged in the provision of interexchange services and was therefore a telecommunications carrier under Minn. Stat. § 237.01, subd. 6.

On February 2, 1998 the Company filed reply comments.

The matter came before the Commission on February 17, 1998.

FINDINGS AND CONCLUSIONS

I. Factual Background

A. ABCC

ABCC is engaged solely in the business of providing teleconferencing services.

When the Company began operating in 1988 it registered with the Department of Public Service as a “telephone company,” then the proper procedure for obtaining authority to operate as a telecommunications services provider offering only competitive services. Teleconferencing services were, and are, classified as competitive services under Minn. Stat. § 237.59, subd. 1.

The Company purchases 360 long distance lines and 480 local lines at retail prices and uses these lines and its computer system to connect its customers with the designated parties to their conference calls. The computer system can be used either to connect “bridge calls,” in which conference participants call ABCC to join a conference, or to initiate calls to conference participants, connecting them to one another at a pre-arranged time.

ABCC provides the administrative support necessary to schedule conference calls and charges for its services on a per-minute, per-line basis. ABCC does its own billing; it does not, like many telecommunications providers, use the billing and collection services of local carriers.

In 1989 the Company asked the Commission to find it exempt from Minnesota regulation on grounds that its intrastate business was *de minimis*. That request was denied. In the Matter of a Request for an Administrative Ruling, Docket No. P-488/EM-89-284, ORDER DENYING REQUEST (September 28, 1989).

B. Past Treatment of Teleconferencing Services

Although the Commission has never found teleconferencing services exempt from regulation, in practice these services appear to have largely become deregulated. While there are many companies in the state engaged solely in providing teleconferencing services, ABCC claimed without contradiction to be the only one complying with the reporting, assessment, and other regulatory requirements of Chapter 237.

The last enforcement action against conference call providers appears to have been in 1988, when the Department brought a complaint against providers operating without Commission certification. The Commission deferred enforcement on grounds that the intrastate portion of the business of the companies at issue was *de minimis*. The Order asked the Department to continue monitoring the situation.¹

Between that time and the present, more pressing enforcement issues took priority. Eventually the present teleconferencing market evolved, featuring large numbers of competitive, but unlicensed and unregulated, providers.

II. Positions of the Parties

A. The Company

The Company claimed it is neither a “telephone company” nor a “telecommunications carrier”

¹In the Matter of the Investigation by the Minnesota Public Utilities Commission Into the Provision of Telephone Conference Call Services, Docket No. P-999/C-88-310, ORDER DISMISSING COMPLAINTS AGAINST DERACOM, INC. AND DAROME CONNECTION, INC. (December 23, 1988).

under Minnesota law and is therefore not subject to regulation under Chapter 237 or to regulatory assessments under Minn. Stat. § 237.295. The Company emphasized that its purpose in bringing the petition was not to escape regulatory assessments, but to make itself more attractive to prospective buyers by establishing its unregulated status.²

The Company stated that the Commission has effectively declined to assert authority over teleconferencing services, making it unfair to subject ABCC to continuing regulation. The Company claimed its regulated status is a competitive disadvantage and a factor reducing its market value.

The Company argued that it did not meet the statutory definitions of “telephone company” or “telecommunications carrier,” because it did not own or operate any telephone lines, did not buy local or interexchange service at wholesale for distribution at retail, and could not provide two-way end-to-end message transmission without the agency of its customers’ local exchange carriers and often their interexchange carriers as well.³ In short, the Company argued, it was not providing “telecommunications service” in any meaningful sense.

B. The RUD-OAG

The RUD-OAG stated that ABCC was not providing telecommunications services any more than a voice mail provider was providing telecommunications services. In both cases, the agency argued, no two-way communication is provided -- the company merely serves as the point to which telecommunications carriers or telephone companies terminate calls. All two-way communication is provided by local exchange or long distance carriers, who are telephone companies or telecommunications carriers.

The RUD-OAG argued that it was important to establish that ABCC was not a telecommunications carrier or telephone company, because many teleconferencing providers, especially those specializing in bridge services, are in fact “chat lines.” Chat lines are “information service providers” under Minn. Stat. § 325.692 and are subject to strict consumer protections under that section. The agency wanted to eliminate the possibility that such businesses could evade the consumer protection statutes by calling themselves telephone companies or telecommunications carriers.

C. The Department

The Department maintained that ABCC was a telecommunications carrier under Minn. Stat. § 237.01, subd. 6 for the same reasons that providers of operator services and other 0+ services, such as collect calls and person-to-person calls, are telecommunications carriers -- they connect customers who call them with other telephone subscribers, either through a computer system like ABCC’s, through their own lines and switches, through leased lines and switches, or through

²The Company’s last quarterly regulatory assessment totaled \$5.91.

³These definitions are found at Minn. Stat. § 237.01, subd. 2 and subd. 6. Basically, telephone companies are long-established providers of local telephone service and telecommunications carriers are providers of interexchange service or new providers of local service licensed under the new statutory regime designed to establish local competition.

some combination of these facilities.

The Department denied that ABCC and other teleconferencing companies were information services providers, because they do not determine or control the subject matter of calls and do not offer open-ended participation in conference calls, instead limiting participation to customer-designated parties.

The Department noted that ABCC had previously sought a declaration that it was not subject to Commission jurisdiction on grounds that the intrastate portion of its business was *de minimis* and that that petition had been denied. In the Matter of a Request for an Administrative Ruling, Docket No. P-488/EM-89-284, ORDER DENYING REQUEST (September 28, 1989).

Finally, the Department stated it saw no reason to enforce against ABCC's competitors the law it urged the Commission to enforce against ABCC:

. . . . At present, all providers must be certified. Because the Department cannot identify a significant public interest to be served by insisting that all conference call providers undergo certification, and because of its limited resources and the need to direct those resources to higher priority matters, the Department has not yet sought to require other companies providing conference call services to become certified.

Department Comments, p. 4.

III. Commission Action

The Commission finds, on the unique facts of this case, that ABCC is not providing telecommunications service and is therefore not subject to regulation under Chapter 237. The company's registration and future regulatory assessments will be canceled.

A. The Legal Standard

1. Persons Furnishing *Telephone Services* Must be Certified

Minn. Stat. § 237.16, subd.1 (b) establishes the general, default certification requirement for persons providing telecommunications services:

No person shall provide *telephone service* in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules. (Emphasis added.)

Telecommunications carriers are exempt from that portion of § 237.16⁴ and are instead subject to

⁴Minn. Stat. § 237.035.

their own certification requirement, set forth at Minn. Stat. § 237.74, subd. 12:

Certification requirement. No telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority.

Telecommunications carriers are defined by statute as persons “authorized to furnish one or more of the following *telephone services* to the public” (Emphasis added.) Listed services include interexchange services and local services authorized under the new statutory regime designed to bring competition to the local market.

In all cases, then, the key to coming under the Commission’s authority is the provision of *telephone services*.

2. Telephone Services Not Clearly Defined

As the parties note, *telephone service*, *telecommunications service*, and similar terms are not defined by statute.

The Commission’s rules define *telecommunications* in the same way as federal law:

The term “telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

47 U.S.C. § 153 (43); Minn. Rules, part 7812.0100, subp. 45.

The Minnesota Supreme Court has grappled with the definition of telephone service once. The Court concluded that telephone service must involve two-way communication and found that the Commission had overstepped its authority in trying to regulate unidirectional closed circuit television signals transmitted via microwave facilities.

The finding of overreaching was based in part on the belief that the microwave transmission system at issue did not threaten the “usual monopolistic evils” the Legislature had established regulation to combat. Minnesota Microwave, Inc. v. Public Service Commission, 291 Minn. 241 (1971).

B. ABCC’s Service Not Telephone Service

The Commission finds that the services being provided by ABCC are not, fundamentally, telephone services.

ABCC’s services are probably best described as highly specialized, quasi-administrative, quasi-telecommunications services. The RUD-OAG’s comparison between teleconferencing and voice mail service is helpful; both services involve messages carried over the telecommunications network, but in both cases what is being sold is something other than the ability to transmit such messages.

For voice mail, what is being sold is the recording and retrieval of messages. For teleconferencing, what is being sold is the logistics of connecting more than two parties to a single call.

In each case, the actual transmission of the underlying message(s) is incidental to the core service of the provider -- permitting the customer to retrieve recorded messages in one case and expediting the joinder of several parties in a single telephone conversation in the other. In each case, actual transmission of the message(s) is handled by a telephone company or telecommunications carrier charging full retail rates.

In neither case is the service provider buying telecommunications services at wholesale and reselling them at retail, the most straightforward and conventional method of providing competitive telecommunications services.

C. Effect of Action on Other Services and Providers

The Commission appreciates the Department's concern that exempting ABCC from regulation not jeopardize the Commission's ability to continue regulating the operator services of established carriers and alternative operator services. The Commission believes, however, that this concern is misplaced.

First, operator services are much less administrative services or technical services than telecommunications services; they are a traditional means of accessing two-way point-to-point communication. In fact, originally all telecommunications services were conducted through operator services. The Commission does not believe, therefore, that exempting teleconferencing services from regulation would mandate exempting operator services as well.

Second, not only the operator services, but the teleconferencing services, of *telephone companies* would continue to be regulated under Minn. Stat. § 237.59, subd. 1. That statute contains a list of services, including both operator and teleconferencing services, which are subject to regulation when provided by a telephone company unless the Commission determines after hearing that those services have become "effectively competitive" and that the need for regulation has ended.

Third, alternative operator services providers, because they normally have a locational monopoly, are recognized by statute to require a higher level of regulation than telecommunications carriers. Minn. Stat. § 237.01, subd. 6. Alternative operator services providers, then, are clearly subject to regulation regardless of the status of teleconferencing services.

D. The Public Interest Supports Finding ABCC Exempt

Finally, in this case the Department has said that it cannot identify a significant public interest to be served by regulating teleconferencing services, and neither can the Commission.

Teleconferencing services are clearly available on competitive terms from a large number of providers. It does not appear that regulating them would fill any real need. In fact, the state agencies charged with protecting the public interest in utility matters (the Department) and protecting utility consumers (the RUD-OAG) do not believe that regulating ABCC and similar companies will promote the public interest.

While this would not justify or prevent the Commission from exercising regulatory duties clearly imposed by statute, it is a legitimate consideration in determining what the statute means. As the

Supreme Court weighed the likelihood of “the usual monopolistic evils” in determining whether unidirectional closed circuit television signals were telephone service, this Commission should do the same in considering whether teleconferencing services by companies engaged solely in their provision constitute telephone service.

The Commission sees no reasonable likelihood that monopolistic evils will materialize because of the absence of regulation of teleconferencing services.

IV. Conclusion

For all the reasons set forth above, the Commission finds that ABCC is not providing telephone service, is not a telephone company, is not a telecommunications carrier, and is not subject to regulation by this Commission. ABCC is not subject to regulatory assessments under Minn. Stat. § 237.295. Its earlier registration as a telephone company under Minn. Stat. § 237.64 will be canceled.

ORDER

1. A Business Conference Call, Inc. is not a telephone company or a telecommunications carrier subject to regulation by this Commission.
2. A Business Conference Call, Inc.’s earlier registration as a telephone company under Minn. Stat. § 237.64 is hereby canceled.
3. A Business Conference Call, Inc. is not subject to regulatory assessments under Minn. Stat. § 237.64.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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