

ISSUE DATE: March 5, 2001

DOCKET NO. P-999/C-00-797

ORDER CLOSING DOCKET

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of a Complaint by Digital
Telecommunications, Inc. (DTI) Regarding
the High Cost of Originating Calls Through
Independent and Competitive Local
Exchange Carriers**

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PROCEDURAL HISTORY

On June 16, 2000, Digital Telecommunications, Inc. (DTI) filed a complaint regarding the originating fees independent telephone companies and competing local exchange carriers within Minnesota were charging inter-exchange long distance telephone companies.

On January 5, 2001, the Commission issued a notice of comment period in this docket. The notice specifically asked for comments addressing whether this complaint should continue to be addressed as a separate matter under the above captioned docket number or if the issues raised in this complaint should be referred to and addressed in the Commission's access reform investigation docket¹ thereby allowing the current docket to be closed.

On January 19, 2001, comments were received from DTI, the Minnesota Independent Coalition (MIC),² the Minnesota CLEC Consortium (MCC),³ McLeodUSA, Inc. (McLeodUSA), Qwest Corporation (Qwest), and the Department of Commerce (DOC).

On January 22, 2001, comments were received from Eschelon Telecom of Minnesota, Inc. (Eschelon).

On January 25, 2001, comments were received from Mainstreet Communications L.L.C.

¹ In the Matter of a Commission Investigation of Intrastate Access Charge Reform, Docket No. P-999/CI-98-674.

² Members include over 80 small incumbent local exchange carriers.

³ Ace Telecommunications; C-I Communications; Encore Communications, HomeTown Solutions, LLC; Hutchinson Telecommunications, Inc.; Integra Telecom of Minnesota, Inc.; Local Access Network; NorthStar Access, LLC; Otter Tail Telecom, LLC; Paul Bunyan Rural Telephone Cooperative; Tekstar Communications, Inc.; USLink, Inc.; and VAL-ED, d/b/a 702.

(Mainstreet Communications).

On February 2, 2001, reply comments were filed by the DOC.

On February 20, 2001, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

The only issue addressed in this order is the question of how the Commission should proceed in the matter of DTI's complaint. The substantive issues raised by DTI's complaint are not a part of this order.

I. DTI's Complaint

DTI is an Interexchange Carrier (IXC) located in Winona, MN. DTI has been providing long distance service in Minnesota since 1998. DTI's complaint does not allege that any specific company is in violation of any statutes or rules but rather alleges that competition is being thwarted by the pricing actions of independent telephone companies (ITCs) and competitive local exchange carriers (CLECs). DTI requests an investigation by the Commission and relief.

The complaint states that the originating access rates charged by Regional Bell Operating Companies (RBOCs) are considerably less than the access rates charged by some CLECs and thus when a CLEC attracts a new customer in an RBOC's service area, the access rates faced by DTI increase abruptly and significantly. DTI cites as an example the change in the cost of originating a call from Crosby, Minnesota. DTI was charged 2 to 3.5 cents per minute (cpm) by Sprint and US WEST, depending on whether the call was an inter or intra-state call, but is currently charged 7.9 cpm (6.4 cpm by C-I Communications and 1.5 cpm by Onvoy). When DTI adds to this the cost of termination of the call to another CLEC or ITC, the call costs DTI up to 16 cpm. This same call would have previously cost DTI 4 to 7 cpm. According to the complaint, the increase in access charges has forced DTI to either increase its rates significantly or face significant losses.

DTI further alleges that the CLECs charging the high access rates then offer an alternative long distance service to end users that does not reflect the high access rates charged to competing IXCs. DTI views this as an anticompetitive practice that will result in an overall increase in the cost of local and long distance services.

The complaint also alleges that independent local exchange carriers (ILECs) are charging access fees that have not reflected the reduced costs enjoyed by these companies as a result of technological changes.

On the question of whether the issues raised by DTI should continue to be addressed as a separate matter under the above docket or be addressed in the Commission's access reform docket, DTI indicated, in its oral presentation, a concern with the time that might be required to complete the access reform docket. DTI indicated that it needed immediate relief from the CLEC access rates.

II. Comments of the Parties

A. Minnesota Independent Coalition and Minnesota CLEC Consortium

MIC and MCC argued that the complaint should be dismissed without prejudice. They stated that the complaint submitted fails to meet minimum threshold requirements under Commission rules⁴ in that the complaint failed to identify specific respondents; does not contain an alleged violation of statute, rules, tariffs or a Commission order; and does not allege specific facts.

MIC and MCC indicated that there are no issues raised in the DTI filing that could not be addressed in the Commission's access charge investigation, which is open for participation by all industry members. An additional separate proceeding involving access charges of all ILECs and CLECs would be inefficient and deplete available administrative resources.

B. Mainstreet Communications

Mainstreet Communications concurred with the comments of MCC.

C. Qwest

Qwest indicated that the issues brought forth in DTI's complaint would be appropriately addressed in the Commission's access reform investigation docket. The issues raised in the complaint are part of a much broader issue that will receive extensive review in the access charge reform investigation.

D. DOC

The DOC argues that the instant docket should be closed and the issues raised by DTI addressed in the ongoing Commission access charge investigation. Since the complaint is not directed towards a specific company, the DOC indicated that it would be most appropriate to address the issues in such a generic investigation.

E. Eschelon

Eschelon argued that the issues raised by DTI are not unique to it as an interexchange carrier and that the consolidation of issues related to access charge reform into the Commission investigation would be the most efficient means for investigating access cost and pricing issues that affect all ILECs and CLECs in Minnesota.

F. McLeodUSA

Since each of the issues raised by DTI will necessarily be discussed in the Commission's continuing investigation into access charges, McLeodUSA argued that, in the interest of administrative efficiency, the present docket should be closed and the issues referred to the Commission's access charge investigation docket.

⁴ Minn. Rules 7829.1700(1)(1999).

III. Commission Action

The Commission recognizes the concerns raised by DTI and its request for relief from what DTI considers unfair access charges. The access charge reform issues, however, are complex in scope and will have an impact state-wide. For these reasons these issues are more appropriately addressed in a broad forum along with other interested parties rather than in a proceeding of narrower scope. Therefore, the Commission will close the present docket without prejudice. DTI or any other party may raise the issues set forth in the present docket in the Commission's docket investigating access charge reform.⁵

ORDER

1. Docket No. P-999/C-00-797, In the Matter of a Complaint by Digital Telecommunication, Inc.(DTI) Regarding the High Cost of Originating Calls Through Independent and Competitive Local Exchange Carriers, shall be closed without prejudice.
2. DTI or any other party may raise the issues addressed in the docket cited in ordering paragraph 1, above, in Docket No. P999/CI-98-674, In the Matter of a Commission Investigation of Intrastate Access Charge Reform.
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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⁵ See footnote 1, above.

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