

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint Against Qwest re:
Transfer of DSL Customer Records to MSN
Internet Services

ISSUE DATE: February 21, 2002

DOCKET NO. P-421/C-02-94

ORDER REQUIRING NEGOTIATIONS AND
ESTABLISHING A REPORTING DATE

PROCEDURAL HISTORY

On January 16, 2002, a Minneapolis-based consumer advocacy coalition, Minnesota ISPs Working Together (the ISPs), filed a complaint with the Commission alleging that Qwest is forcing tens of thousands of its Minnesota DSL customers to switch to MSN's Internet Access Service and that these customers have not been clearly informed regarding their options and the consequences with respect to quality of service.

On February 5, 2002, Qwest responded to the complaint denying all allegations and arguing, that the Commission does not have jurisdiction over the matter.

On February 14, 2002, the Minnesota Department of Commerce (the Department) and Microsoft Corporation filed comments and the Office of the Attorney General filed comments on February 15, 2002.

The Commission met on February 19, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. THE ISPS' COMPLAINT

The Complainant is a Minneapolis-based consumer advocacy coalition, Minnesota ISPs Working Together (the ISPs) which includes, among others, Mainstream Solutions, Infinitivity, Sihope Communications, Webb Lake Software, VISI.com, Sound Choice Internet, Skypoint Internet, and Backpack Software, Inc. The ISPs complained of the forced switching of tens of thousands of Qwest.net DSL customers to Microsoft's MSN Internet Access service that was scheduled for January 21, 2002 (since extended by Qwest to mid-March).

The ISPs contended that many of Qwest's Minnesota customers (Windows ME, 2000 and XP residential subscribers of DSL services from Qwest.net) have not been clearly informed that they have a free choice of which Internet Service Provider (ISP) they may switch to.

The ISPs also complained that to change DSL providers, customers are required to be out of service for a minimum of 17 days, purchase expensive replacement equipment and pay additional activation fees. The ISPs alleged that customers would not have had to experience these types of fees and interruptions of service if customers had made an informed choice of one of the many local ISPs who are compatible with the customers' current Qwest DSL service.

Among other things, the ISPs requested that the Commission

- (1) immediately order Qwest to indefinitely postpone the forced switching of customers from Qwest.net to MSN;
- (2) require that all transitions from Qwest.net DSL service be "Opt In" only, without a default choice on any set date;
- (3) require Qwest to provide Qwest.net customers a list of ISP options as a drop down list from the browser or as a part of any customer email, Web site or media announcement; and
- (4) restrict Qwest from converting a customer's DSL line service from one tariff plan to another without informed and full consent of the ISP options available and the effect of that change.

The ISPs argued that the Commission has jurisdiction over its complaint because MSN is acting as a telecommunications provider as defined in Rule 7812 and because Qwest's service is conjoined with traditional telephone services. The ISPs concluded that without action from the Commission, thousands of Minnesota customers will remain unaware of the situation they are rushing toward. When they finally do learn of the situation that Qwest.net and MSN have placed them in, the ISPs warned, it will be too late to avoid the consequences of delays and interruption of Internet service.

II. QWEST'S RESPONSE

Qwest responded that the Commission does not have jurisdiction over the ISP complaint because the FCC has exclusive jurisdiction over DSL service and the Commission lacks jurisdiction over Qwest.net and MSN. Qwest argued that any relief would be inappropriate in this proceeding. Qwest also addressed the issues raised by the ISPs.

At the hearing, Qwest indicated that it was making progress on resolving these issues in discussions with the OAG and was very interested in resolving the complaints of its customers.

III. PARTIES' COMMENTS

A. Microsoft Corporation

Microsoft Corporation operates as an ISP under the trade name of MSN Internet Access Services (MSN). MSN commented solely on the issue of the jurisdiction of the Commission in this matter, denying that the Commission had any.

B. Office of the Attorney General

The OAG argued that the Commission clearly has jurisdiction over the matter and on the substance of the complaint, the OAG proposed that the Commission proceed on two tracks:

- First, the Commission should address problems faced by customers by 1) allowing customers who have already migrated to MSN to revisit that decision without imposition of fees, 2) pushing back the proposed March default migration, and 3) requiring Qwest to send customers a more complete notification that does not provide MSN preferential treatment.
- Second, the Commission should consider investigating Qwest's transfer of customers to MSN for possible violations of state or federal law.

C. The Department

The Department rejected Qwest's denial of jurisdiction and stated that the Commission may assert jurisdiction over issues raised in the Minnesota ISPs' complaint.

Among other things, the Department recommended that the Commission require Qwest to 1) contact all DSL customers that have switched to MSN and provide them with a list of competing ISP's, including ISP contact information, to enable customers to decide whether they would like to switch ; 2) provide a three month period in which DSL customers that have switched to MSN may switch to another provider, without being charged any switching fees by Qwest and without having to buy new modems; and 3) provide information on its website about all ISP options, in a nondiscriminatory manner, including providing contact information about all ISPs as well as advising customers of requirements for changes of DSL modems.

IV. COMMISSION ANALYSIS AND ACTION

The jurisdiction issue is fundamental. Based on Qwest's response, however, a formal Commission proclamation on this issue may be more distracting than helpful in resolving this matter in an expedited manner. The Commission finds it appropriate at this time to help the parties focus on resolving the issues raised by the ISPs and the Qwest customers who have shared their frustrations with the Commission about their experiences since Qwest began phasing out the DSL support for its Qwest.net service and promoting the migration of its residential Qwest.net customers to MSN.

To expedite resolution of these practical concerns, therefore, the Commission will direct the parties to address the problems faced by customers, negotiating the following points 1) allowing customers who have already migrated to MSN to revisit that decision without imposition of fees or

delays; 2) pushing back the proposed March default migration; 3) requiring Qwest to send a more complete notification that does not provide MSN preferential treatment; and 4) allowing customers to make seamless transfers¹ (seamless migration) between ISPs.

The parties will be required to report the results of their negotiations within 7 days.

ORDER

1. On Tuesday February 26, 2002, the parties shall report on the results of their negotiations on four (4) points:
 - a) allowing customers who have already migrated to MSN to revisit that decision without imposition of fees or delays;
 - b) pushing back the proposed March default migration;
 - c) requiring Qwest to send a more complete notification that does not provide MSN preferential treatment; and
 - d) allowing customers to make seamless transfers (seamless migration) between ISPs.

The parties referred to in this Order Paragraph are: The Complainant ISPs (including Eric Ostberg of Sound Choice Internet), the Respondent Qwest, MSN, and the public agencies, the Department and the RUD-OAG.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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¹ For purposes of this discussion and creating no precedent, a seamless transfer is one in which the customer experiences no interruption of service and no unreasonable transfer costs.