

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of Desktop
Media, Inc. Against Qwest Corporation
Regarding Interconnection Terms

ISSUE DATE: October 28, 2002

DOCKET NO. P-421/C-02-1597

ORDER ASSERTING JURISDICTION,
FINDING REASONABLE GROUNDS TO
INVESTIGATE, AND DECIDING TO
REFER THE MATTER TO OFFICE OF
ADMINISTRATIVE HEARINGS

PROCEDURAL HISTORY

On December 15, 2000, the Commission approved the interconnection agreement (ICA) between Desktop Media, Inc. (Desktop) and Qwest Corporation (Qwest) in Docket No. P-5934, 421/IC-00-1509. Desktop adopted the AT&T - U S WEST interconnection agreement.

On September 24, 2002, Desktop filed a complaint against Qwest pursuant to Minn. Stat. § 237.462. The complaint alleged that Qwest has violated the terms of its ICA with Desktop, thus hindering Desktop's ability to compete in the market. Desktop requested an expedited proceeding to resolve its complaint.

On October 10, 2002, Qwest filed an answer denying that the Commission has jurisdiction over Counts 2 and 3 of Desktop's complaint, objecting to an expedited hearing of this matter, and requesting that the complaint be dismissed.

The Commission met on October 16, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. RELEVANT DECISIONS FOR THIS STAGE OF THE PROCEEDINGS

Minn. Rule § 7829.1800, subd. 1, states that:

The commission shall review a formal complaint as soon as practicable to determine whether the commission has jurisdiction over the matter and to determine whether there are reasonable grounds to investigate the allegation. On concluding that it lacks jurisdiction or that there is no reasonable basis to investigate the matter, the commission shall dismiss the complaint.

The Commission has received a formal complaint from Desktop. Accordingly, the Commission must determine whether it has jurisdiction over this complaint, whether there are reasonable grounds to investigate Desktop's allegations, and (if the answer is yes to both) whether to pursue this matter via the expedited process authorized by Minn. Stat. § 237.61 or via a contested case under Chapter 14.

II. JURISDICTION

Desktop argued that the Commission has jurisdiction over this complaint pursuant to 47 U.S.C. §§ 252(e) (authority of state commissions to enforce ICAs), 251(c)(2) (duty of incumbent carriers to interconnect with CLECs); Minn. Stat. §§ 237.081 (Commission investigations), 237.462 (competitive enforcement); and Part A, Section 11.1 of the ICA (continuing jurisdiction of the Commission to implement and enforce all terms and conditions of the ICA).

Qwest acknowledged the jurisdiction of the Commission to consider the allegations of Counts (1) and (4) of the Desktop complaint under the statutes and authorities cited by Desktop. Qwest denied that this Commission has jurisdiction over the allegations of Counts (2) and (3) of the Desktop complaint under the statutes or authorities cited by Desktop or under any other statutes or authorities.

The Commission finds that it has jurisdiction over all counts of Desktop's complaint. In addition to the grounds provided by Desktop, the Commission notes that clause (3) of Minn. Stat. § 237.462, subd. 1 refers to violations of "an approved interconnection agreement if the violation is material," such violations being the crux of Desktop's allegations.

III. REASONABLE GROUNDS TO INVESTIGATE

The Commission takes allegations that Qwest has improperly and intentionally inhibited Desktop in its ability to compete effectively in the local telecommunications market seriously. Promotion of effective competition at the local service level is a policy priority established by the Minnesota legislature and embraced by the Commission. Desktop has provided a formal verified complaint that appears sufficient in detail to warrant further investigation of this matter.

IV. REFERRAL TO THE OFFICE OF ADMINISTRATIVE HEARINGS

Desktop has asked that the Commission

1. declare that Qwest's conduct breached the ICA;
2. direct Qwest to immediately provision Desktop with Unbundled Local Switching in a manner that meets Desktop's needs;
3. award to Desktop DMOQ credits based upon Qwest's failure to provision Unbundled Local Switching;
4. direct Qwest to immediately implement efficient processes that will enable customers who receive MSN Broadband DSL service to change local service providers without suffering an unreasonable interruption of service;

5. direct Qwest to provide Desktop with the MSDI feature on an unbundled basis, as required by the parties' ICA;
6. direct Qwest to provision dark fiber in response to Desktop's request for fiber between the Red Wing and Winona central offices; and
7. grant Desktop such other and further relief as the Commission may deem just and reasonable.

The record is not adequately developed to allow the Commission to reach the merits and issue an Order regarding these requests for relief, particularly in light of Qwest's firm denial that Desktop's claims have merit. The Commission believes that it will be more efficient for an ALJ to develop the record than for the Commission to hear the matter on its own in an expedited proceeding pursuant to Minn. Stat. § 237.61. The Commission will, therefore, refer this matter to the Office of Administrative Hearings (OAH) for a contested case under Chapter 14.

In addition to asking the Administrative Law Judge (ALJ) assigned to this matter to develop the record and make recommendations regarding Desktop's requests for relief, the Commission requests that the ALJ consider the nature of the allegations (interference with local competition) and the importance the Commission places upon swift resolution of such matters in determining his timetable for addressing this matter.

ORDER

1. The Commission asserts jurisdiction over Desktop's complaint and finds reasonable grounds to investigate Desktop's allegations.
2. In a separate Order in this docket (NOTICE AND ORDER FOR HEARING) being issued contemporaneously, the matter is being referred to the Office of Administrative Hearings for record development and recommendations by an Administrative Law Judge on the issues raised in Desktop's complaint.
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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