

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Phyllis A. Reha  
Gregory Scott

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Complaint of Velocity  
Telephone, Inc. Against Qwest Corporation  
Regarding Qwest's Anti-competitive Conduct  
and Request for Expedited Proceeding

ISSUE DATE: July 28, 2003

DOCKET NO. P-421/C-03-1024

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

**PROCEDURAL HISTORY**

On May 24, 2001, the Commission approved the interconnection agreement (ICA) between Velocity Telephone, Inc. (Velocity) and Qwest Communications, Inc (Qwest). (Docket No. P421,5986/IC-01-591).

On July 2, 2003, Velocity filed its complaint pursuant to Minn. Stat. § 237.462. The complaint alleges that Qwest has violated the terms of its ICA by failing to provision dark fiber, refused interconnection as requested by Velocity, and refused to provide Velocity with meet point transport on parity with Qwest's interoffice transport. Velocity also requested that the Commission order an expedited proceeding to address Velocity's complaint in accordance with Minn. Stat. § 237.462, subd. 6.

On July 17, 2003, Qwest filed its response to the Velocity Complaint and requested that the Commission: 1) find that Qwest has complied with the interconnection agreement with Velocity; 2) deny the relief sought by Velocity; 3) find that the Commission does not have jurisdiction to award the monetary damages sought by Velocity; and 4) dismiss Velocity's complaint.

The Commission met on July 24, 2003 to consider this matter.

## FINDINGS AND CONCLUSIONS

### **I. VELOCITY'S REQUESTS FOR RELIEF**

Velocity requested that the Commission

- (1) commence and expedited proceeding, pursuant to the interconnection agreement and Minn. Stat. §237.462, subd. 6;
- (2) find that Qwest's conduct breached the Parties' Interconnection Agreement;
- (3) find that Qwest's conduct breached Minnesota law;
- (4) direct that Qwest immediately provide interconnection, dark fiber, and meet point interoffice facilities in a manner that complies with the Interconnection Agreement;
- (5) award to Velocity all Per Occurrence Credits due under the Interconnection Agreement, including but not limited to Per Occurrence Credits of \$2,500 per day that Qwest fails to make available the dark fiber between Qwest's Orchard and Bryant offices, as requested by Velocity;
- (6) direct that Qwest compensate Velocity for the cost of obtaining service from alternative sources, which Velocity has incurred as a result of Qwest's delays; and
- (7) grant Velocity such other and further relief as the Commission may determine is just and reasonable under the circumstances.

### **II. QWEST'S REQUESTS FOR RELIEF**

Qwest requested that the Commission

- (1) find that Qwest's conduct complied with the Interconnection Agreement and Minnesota law;
- (2) deny the relief sought by Velocity;
- (3) find that the Commission does not have jurisdiction to award the monetary damages sought Velocity; and
- (4) dismiss Velocity's complaint.

### **III. RELEVANT DECISIONS FOR THIS STAGE OF THE PROCEEDINGS**

Minn. Rules, Part 7829.1800, subp. 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 Velocity. Accordingly, the Commission must determine whether it has jurisdiction over this complaint, whether there are reasonable grounds to investigate Velocity's allegations, and (if the answer is yes to both) whether to pursue this matter via the expedited process authorized by Minn. Stat. § 237.462, subd. 6 or via a contested case under Chapter 14.

### **IV. JURISDICTION**

Velocity argued that the Commission has jurisdiction over this complaint pursuant to 47 U.S.C. §§ 252(e) (authority of state commissions to enforce interconnection agreements), Minn. Stat. §§ 237.081 (investigations), 237.462 (competitive enforcement), and Part A, Section 1.1 of the Qwest/Velocity ICA (Commission jurisdiction to implement and enforce terms of the Agreement).

Qwest argued that Velocity does not provide local service and therefore does not meet the definition of a telecommunications carrier according to the FCC and therefore may not interconnect under Section 251 of the Act. Further, Qwest argued that Velocity does not meet the standards of a local service provider according to Minnesota statutes and rules and therefore is not eligible for the remedies that it seeks. Qwest denies that it has failed to comply with the Parties' Interconnection Agreement.

The Commission finds that it has jurisdiction over Velocity's complaint. The Commission has the authority to investigate a complaint by another telephone company or any other provider of telephone service under Minn. Stat. §237.081, Subd. 1a. The Commission also has the authority under Minn. Stat. §237.462 to enforce and assess penalties for violations of an approved interconnection agreement if the violation is material (Minn. Stat. §237.462, subd. 3). Velocity's complaint clearly alleges violation of its interconnection agreement with Qwest.

### **V. REASONABLE GROUNDS TO INVESTIGATE**

Velocity has contended in some detail that Qwest has violated its ICA with Velocity and Minnesota law, thereby hindering Velocity from competing in the market for local service, delayed Velocity's ability to provide service and caused Velocity to incur costs it would otherwise not have incurred. Velocity claims that Qwest has:

- (1) improperly failed to provision dark fiber;
- (2) improperly refused to provide Velocity with interconnection in the manner requested by Velocity;
- (3) improperly refused to provide Velocity with meet point transport at parity with Qwest's interoffice transport.

Velocity claimed that it sought to interconnect with Qwest at a point between Qwest's Bryant and Orchard end offices and sought to use a "SONET" ring architecture. Qwest responded with an initial proposal for a meet point about two miles from Velocity's central office and offered Qwest's SONET services rather than using the jointly provided network proposed by Velocity. Qwest subsequently informed Velocity that it would not allow Velocity to interconnect in the manner requested and that Qwest designated its St. Paul tandem as the interconnection point which is 20 miles from Velocity's Golden Valley end office. Qwest claimed that it has the right to designate interconnection points when using directional trunking as proposed by Velocity.

Qwest disagreed that it has violated their interconnection agreement and Qwest requests that the complaint be dismissed. Qwest believes that it has complied with the Interconnection Agreement between Velocity and Qwest. Qwest also argued that Velocity has misstated critical factual information and that Velocity has sought remedies that the Commission does not have the authority to award. In addition, Qwest raised the fundamental question whether Velocity is a telecommunications carrier according to the FCC and whether it is a local service provider according to Minnesota statutes and rules.

The Commission takes the companies' allegations seriously. While acknowledging that Qwest has formally denied Velocity's allegations and in no way prejudging the merits of those claims, the Commission finds that Velocity has provided reasonable basis for further investigation.

## **VI. EXPEDITED PROCEEDING OR REFERRAL FOR CONTESTED CASE**

Velocity requested an expedited proceeding to address the continuing violations by Qwest. Velocity argued that an expedited proceeding is warranted because Qwest's conduct is harmful to the public interest because Qwest's refusal to provide facilities and services under the parties' interconnection agreement inhibits Velocity's ability to compete effectively. Velocity asserted that the public is being denied the benefits of competition, including lower prices and the ability to choose a local service provider. Further, Velocity stated, the Parties' Interconnection Agreement authorizes an expedited proceeding to resolve the Parties' disputes.

Qwest did not object to Velocity's request for an expedited proceeding. Qwest denied, however, that the Commission has remedial powers that would require that Qwest to compensate Velocity for losses suffered due to Qwest's position in this matter. Qwest asserted that it is entitled to a jury trial for any claim of money damages as set forth in the Minnesota Constitution.

Pursuant to Minn. Stat. § 237.462, subd. 6(a), the Commission has the option to hear Velocity's complaint on an expedited basis in lieu of referring the matter to the Office of Administrative Hearings (OAH) for a contested case proceeding. Based on its assessment of the facts of this case, the timetable applicable to a Commission-conducted expedited proceeding, and its own administrative resources, the Commission finds that it will be more administratively efficient to refer this case to the OAH for record development in a contested case proceeding. Given the importance and urgency that the Commission assigns to this matter, however, the Commission will emphasize and request that the Administrative Law Judge (ALJ) assigned to this matter proceed expeditiously and return a report and recommendations as promptly as circumstances and due regard for proper factual development permit.

### **ORDER**

1. The Commission asserts jurisdiction over Velocity's complaint and finds reasonable grounds to investigate Velocity's allegations.
2. Velocity's complaint is hereby referred to the Office of Administrative Hearings for record development, findings of fact and recommendations by an Administrative Law Judge on the issues raised in Velocity's complaint and Qwest's answer.
3. The Commission's Order announcing the prehearing conference and commencing the contested case proceeding (the Commission's NOTICE AND ORDER FOR HEARING) is being issued contemporaneously with this Order.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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