

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of the Complaint of PrairieWave Communications, Inc. (f/k/a McLeodUSA Telecom Development, Inc.) Against Qwest Corporation Regarding the Payment of Switched Access Charges

ISSUE DATE: December 11, 2003

DOCKET NO. P-421/C-02-1439

ORDER APPROVING SETTLEMENT AND CLOSING DOCKET

PROCEDURAL HISTORY

On August 28, 2002, McLeodUSA Telecom Development, Inc., now PrairieWave Communications, Inc. (PrairieWave), filed a complaint against Qwest Corporation claiming that Qwest had violated its interconnection agreement with PrairieWave, PrairieWave's tariffs, and other contractual arrangements between the two companies by improperly routing and recording traffic, depriving PrairieWave of some \$90,500 in intrastate access charges. On October 14, 2002, the Commission referred the case to the Office of Administrative Hearings for contested case proceedings before an Administrative Law Judge.

While the case was before the Administrative Law Judge, a coalition of competitive local exchange carriers intervened, stating that they, too, had been adversely affected by improper traffic routing and recording by Qwest. The coalition comprises the carriers set forth below:

- Ace Communications Group
- C-1 Communications, Inc.
- HomeTown Solutions, LLC
- Hutchinson Telephone Company
- Mainstreet Communications, LLC
- NorthStar Access, LLC
- Otter Tail Telecom, LLC
- Paul Bunyan Rural Telephone Cooperative
- Tekstar Communications, Inc.
- Unitel Communications
- U.S. Link, Inc.
- VAL-ED Joint Venture, LLP
- Crystal Communications, Inc.

On August 25, 2003, Qwest and PrairieWave filed a joint motion asking the Commission to approve a settlement agreement between the two companies and to dismiss the complaint with prejudice as to PrairieWave. On August 27, 2003, the coalition of competitive local exchange carriers filed a letter stating that the coalition did not oppose the settlement, with the understanding that the settlement did not bind the coalition, did not address its concerns, and did not affect the right of any member of the coalition to bring a complaint against Qwest regarding matters raised in the course of the proceeding.

On September 9, 2003, the Department of Commerce (the Department) filed comments recommending that the Commission approve the settlement with two modifications – one to eliminate a provision requiring the application of South Dakota law and the other to clarify that a provision requiring private arbitration did not apply to any provision appearing both in the settlement agreement and in the interconnection agreement between the parties. The Department also recommended that the Commission require the parties to file an amendment to their interconnection agreement incorporating the terms of the settlement agreement.

On October 3, 2003, Qwest and PrairieWave filed an amendment to their interconnection agreement incorporating the terms of their settlement agreement. On October 14, they filed a supplement to their settlement agreement complying with the Department's recommendations. On October 23, 2003, the Department filed supplemental comments recommending approval of the settlement agreement as modified by the supplemental filing of October 14.

On December 4, 2003, the settlement came before the Commission.

FINDINGS AND CONCLUSIONS

Minnesota's Telecommunications Act encourages the voluntary settlement of disputes, especially disputes between competing carriers. Minn. Stat. § 237.076, subd. 1 articulates a general policy in favor of settlements, and Minn. Stat. § 237.011 articulates a specific policy in favor of settlements "between and among competing providers," the situation here.

The Commission has examined the settlement, as supplemented by the October 14 filing, and concurs with the Department that it resolves the dispute between Qwest and PrairieWave on terms that are consistent with the public interest given the specific facts of this case. The settlement will be approved and the docket closed.

The Commission will so order.

ORDER

1. The Commission accepts and adopts the settlement agreement submitted by Qwest Corporation and PrairieWave Communications, Inc., as amended by their October 14, 2003, filing.

2. This docket is hereby closed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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