

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of a Commission Investigation of  
Intrastate Access Charge Reform

ISSUE DATE: December 22, 2003

DOCKET NO. P-999/CI-98-674

ORDER SETTING PROCEDURAL  
FRAMEWORK AND SOLICITING  
INFORMATION

**PROCEDURAL HISTORY**

On June 4, 1998, the Commission opened the current docket to explore reforming access charges. The investigation has involved multiple rounds of written comments and oral arguments.

On April 23, 2003, AT&T Communications of the Midwest, Inc. and MCI WorldCom Communications, Inc. (AT&T/MCI) jointly petitioned the Commission to impose a procedural framework on the investigation, with special attention to investigating the Carrier Common Line Charge (CCLC).

By May 30, 2003, the Commission had received comments on the joint petition from the Legal Services Advocacy Project (Legal Services); the Minnesota Department of Commerce (the Department); the Minnesota Office of Attorney General's Residential and Small Business Utilities Division (OAG-RUD); Qwest Corporation (Qwest); jointly from Citizens Telecommunications Company of Minnesota, Inc., and Frontier Communications of Minnesota, Inc. (Citizens/Frontier); jointly from Sprint Communications Company, L.P., and Sprint Minnesota, Inc. (Sprint); jointly from a coalition of competitive local exchange carriers (CLEC Coalition); and jointly from a coalition of independent telephone companies known as the Minnesota Independent Coalition, including Mankato Citizens Telephone Company and Mid-Communications, Inc. (collectively, MIC).

On June 12, 2003, the Commission received reply comments from AT&T/MCI; Citizens/Frontier; the CLEC Coalition; the Department; MIC; OAG-RUD; and Qwest.

On October 13, 2003, the Commission issued a notice clarifying the relationship between the current docket and three other Commission investigations, and reaching a tentative conclusion that the current access charge mechanism is unsustainable and anticompetitive.

On November 14, 2003, the Commission issued a notice directing interested parties to review a discussion of access reform labeled *Access Reform and Universal Service in Minnesota: Staff White Paper*, posted on the Commission's World Wide Web site.

On December 2, 2003, MIC filed supplemental comments.

On December 4, 2003, the matter came before the Commission. Just prior to the hearing the Department gave the Commissioners a table stating, for each of Minnesota's telephone companies, the following information:

- Total number of retail lines.
- Total operating revenues.
- Operating revenues per line.
- Total CCLC revenues.
- CCLC revenues per line.
- CCLC as a percentage of total revenues.
- Estimated total monthly cost per line.

Because the table contained data that the companies had designated as trade secret, the Department did not provide copies of the document to all parties or offer it into the record.

## FINDINGS AND CONCLUSIONS

### **I. Introduction**

When Mr. Smith places a long-distance phone call to Ms. Jones, Mr. Smith's long-distance company pays access charges to Mr. Smith's local service provider for the privilege of using its facilities to originate and transport the call. Likewise, the long-distance company pays access charges to Ms. Jones' local service provider for the privilege of transporting and terminating the call to her. The long-distance company incorporates these costs into the rate that it charges Mr. Smith for providing long-distance service.

In Minnesota, a local service provider imposes charges for three types of access services, which the provider lists in its tariffs. It charges for *non-switched access*, also called *special access*, for calls that are always routed to the same place and do not require the use of the provider's routing computer, called a "switch." (Large customers that can aggregate a lot of calls – a university campus or corporate headquarters, for example – may benefit from using non-switched access.) The local service provider also charges for providing *switched access* for typical calls that must be routed through the provider's switch. And the local service provider imposes a *carrier common line charge* (CCLC), putatively for the use of the wire that connects a customer's premises to the local service provider's network.

The Commission has opened the current investigation to explore the appropriateness of these access charges, and has solicited comments from the parties.

## II. Party Comments

While the parties address a variety of topics in their comments, most of their remarks focus on a number of common themes, set forth below.

### A. Should access charges be changed? If so, how?

AT&T/MCI and Qwest argue that Minnesota's access rates are not based on cost, and impede competition. A local service provider has a monopoly on access to its customers' lines, making access rates immune from competitive pressures. Various harms result: High access rates inflate costs for long-distance providers. They create an unwarranted incentive for building facilities that bypass the local service provider's facilities. Substitute services that can avoid paying access charges – services such as wireless phones, voice over internet protocol, electronic mail, or even long-distance service offered by the local service provider<sup>1</sup> – place standard long-distance providers at a competitive disadvantage. And where a local service provider also sells long-distance service in competition with other long-distance providers, an above-cost access rate may result in an anticompetitive “price squeeze.”<sup>2</sup>

The Department and Qwest also generally favor restructuring access charges.

AT&T/MCI and Qwest favor setting the CCLC equal to cost. Moreover, because the CCLC does not correspond to any specific function, AT&T/MCI argue that the cost of the CCLC is \$0.

### B. If the Commission reduces a carrier's access revenues, must the Commission provide the carrier with another means of receiving equal revenues?

Legal Services and OAG-RUD argue that the Commission should not reduce access revenues without concomitantly implementing a universal service fund<sup>3</sup> to offset the revenue loss.

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<sup>1</sup> See In the Matter of the Intrastate Access Recovery, or Similar Charges, Filed by AT&T Communications, Sprint Communications, MCI WorldCom, Excel Communications, Teleconnect, U.S. Telecom Long Distance, Docket Nos. P-442/EM-02-539 et al. ORDER ALLOWING INTRASTATE RECOVERY CHARGES (November 5, 2003) at 1-2, 6-7 (a local service provider may waive intrastate access fees for its long-distance service).

<sup>2</sup> A price squeeze results when a monopolist wholesale supplier sells a product to retailers at an inflated price, while also selling the product at retail. Competitors are caught between the need to pay the monopolist's wholesale prices on the one hand and the need to compete with the monopolist's retail price on the other. *Federal Power Commission v. Conway Corp.*, 426 U.S. 271 (1976).

<sup>3</sup> A “universal service fund” is an explicit mechanism for subsidizing local services in high-cost areas or for low-income subscribers. Both federal and state law provide for the Commission to establish such a fund. See Minn. Stat. § 237.16, subd. 9; In the Matter of a Universal Service Rulemaking, Docket No. P-999/R-97-609; In the Matter of the Commission

Otherwise, local service providers will offset the revenue loss by increasing local rates, thereby driving subscribers to discontinue their telephone service.

Sprint and Qwest also favor making local service providers whole for their lost access revenues. Such a policy is not only reasonable, Sprint argues, but would greatly accelerate the elimination of the CCLC.

AT&T/MCI argue that linking access charge reductions to other rate increases creates needless administrative obstacles.

Assuming that a carrier were entitled to some offsetting revenue increase, AT&T/MCI and Sprint note that there are many different revenues that might be increased, including lump-sum charges for intrastate toll plans. Qwest suggests recovering loop costs through an end-user charge; the Department opposes this suggestion. Finally, various parties emphasize the need to implement a state universal service fund as quickly as possible, as discussed further below.

### **C. What role should negotiations play in adjusting access rates?**

Citizens/Frontier, the CLEC Coalition, MIC and OAG-RUD support letting the parties negotiate changes to access charge rates, and then referring any unresolved issues for a contested case proceeding. The CLEC Coalition proposes that the incumbent local service providers be organized into three groups for purposes of negotiating CCLC rates, and that CLECs negotiate as a separate group.

AT&T/MCI do not oppose negotiations in the abstract, but doubt the efficacy of negotiations to reform access charges. They note that the local service providers have had, and still have, the power to reduce intrastate access rates, but during the five-year pendency of the current docket, they have not done so. AT&T/MCI argue that setting time aside for negotiations would simply delay resolution of the docket.

### **D. What information must the Commission consider before addressing CCLC reform? May, and should, the Commission address CCLC reform separately from other issues?**

Citizens/Frontier, the CLEC Coalition, MIC and OAG-RUD argue that the issue of CCLC levels cannot be addressed in isolation because it is linked to local service rates generally, including the issue of universal service and retail rate rebalancing.<sup>4</sup> The CLEC Coalition and OAG-RUD cite

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Investigation of Cost for the Appropriate Level of Universal Service Support, Docket No. P-999/CI-00-829.

<sup>4</sup> The rates of a telecommunications service provider must be the same throughout Minnesota unless for good cause the Commission approves different rates. Minn. Stat. §§ 237.60, subd. 3; 237.64, subd. 2. However, the cost of providing service varies throughout the state. “Rate rebalancing” refers to the practice of permitting retail rates to be less uniform and conform more closely to regional costs.

prior orders of this Commission and the Federal Communications Commission (FCC) for the proposition that the proper allocation of a local service provider's costs to long distance companies is a question of fact, and that the Commission must consider a number of public policy goals when designing rates. Before the Commission proceeds further in this docket, Citizens/Frontier, MIC and OAG-RUD argue that the Commission must collect updated access charge data, including information about the consequences of any CCLC reform for consumers, incumbent local telephone companies and CLECs. Consequently, the Commission should refer this matter for a contested case proceeding.

AT&T/MCI, the Department and Sprint ask the Commission to take up the issue of reforming CCLC charges separately from addressing other issues such as switched access rates, retail rate rebalancing or universal service. They regard the level of CCLC as a matter of policy rather than of fact because the CCLC is not associated with any specific function. Consequently, these parties argue that CCLC reform would not entail the kinds of factual inquiry required for analyzing switched access rates. Nevertheless, the Department favors some period of fact-finding, including a review of evidence regarding the consequences of a CCLC reduction, short of a contested-case proceeding.

The Department does not advocate linking the timing of CCLC reform to the launch of a state universal service fund, but notes that a gradual reduction in access charge rates would permit the two policies to be implemented simultaneously. Similarly, the Department does not advocate delaying CCLC reform until individualized analyses have been performed on each telephone company, but the Department would favor permitting any telephone company to petition the Commission for relief if its circumstances warranted special consideration.

Qwest also favors elimination of the CCLC, but in the context of broader access charge reform.

**E. Does Minnesota Statute § 237.12, subdivision 3, bar the Commission from eliminating the CCLC?**

Minnesota Statute § 237.12, subdivision 3, states:

Telephone companies providing long-distance telephone services shall pay compensation to telephone companies providing local telephone services that includes a fair and reasonable portion of:

- (1) the costs of local exchange facilities used in connection with long-distance telephone services, including facilities connecting a customer to local switching facilities; and
- (2) the common costs of companies providing local telephone services.

AT&T/MCI, the Department and Sprint argue that this statute does not bar the Commission from eliminating the CCLC. They argue that the CCLC is simply a matter of rate design, a subject within the Commission's legislative discretion. And they argue that the Commission may be justified in concluding that \$0 is the fair and reasonable portion of the costs to assign to the long-distance market, given the new competitive environment. Alternatively, the Department suggests the option of reducing the CCLC to a *de minimis* level.

Citizens/Frontier, the CLEC Coalition, MIC and OAG-RUD argue that \$0 or an arbitrary *de minimis* amount cannot represent a “fair and reasonable level” of contribution to a local service provider’s operations, and that the Commission lacks the authority to relieve a long-distance company of its obligations to make such contributions. These parties argue that the Commission must consider factors beyond mere economic cost when applying this statute.

**F. Should reductions in CCLC rates be linked to reductions in the rates of long-distance providers?**

MIC and OAG-RUD argue that Minnesota customers will not benefit from CCLC reductions unless the Commission requires long-distance companies to pass through their savings in the form of lower long-distance rates.

AT&T/MCI argues that competitive pressures set the rates for long-distance providers, so no Commission intervention is necessary or appropriate.

**III. Commission Action**

Having reviewed the parties’ comments and oral arguments, the Commission finds adequate grounds for proceeding with its investigation of access charge reform as follows.

**A. Bifurcation**

Specifically, the Commission resolves to address the issue of reforming the CCLC separately from the issue of addressing switched access charges or other matters. The Commission acknowledges the arguments of the parties emphasizing the merits of addressing CCLC reform as part of more general access reform, or even in conjunction with establishing a state universal service fund. The Commission notes that it has proceedings underway addressing each of these topics. Nevertheless, expedience and administrative simplicity favor addressing CCLC reform as a separate matter. The Commission is guided by the FCC’s own conclusions when addressing access charge reforms:

As we devise a transition to a more economically rational approach to access charges and universal service, we need to balance various and sometimes conflicting interests – including promotion of competition, deregulation, maintaining affordability for all, and avoiding rate shock to consumers. It is important, however, that the Commission not permit itself to be gridlocked into inactivity by endeavoring to find precise solutions to each component of this complex set of problems. It is preferable and more reasonable to take several steps in the right direction, even if incomplete, than to remain frozen with indecision because a perfect, ultimate solution remains outside our grasp.<sup>5</sup>

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<sup>5</sup> *In the Matter of Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, FCC 00-193 (rel. May 21, 2000) at ¶ 27.

## **B. Record development**

The parties disagree about the need for additional record development and the need for doing so via a contested case proceeding. Having heard and considered the concerns of the parties, the Commission will establish the following procedures for developing an appropriate record.

### **1. Contested case proceeding**

The Commission elects to refer this matter to the OAH for a contested-case proceeding. This process will ensure a fully-developed and organized factual record for the Commission's consideration. The Commission will ask the OAH to convene a prehearing conference no later than 120 days after the referral, and to provide the Commission with a report and recommendation within six months of the prehearing conference.

### **2. Scope of referral**

Before making the referral, however, the Commission will invite the parties to identify appropriate contested issues of material fact to be referred for further development. The Commission will then be able to determine the scope of the analysis to request of the OAH.

### **3. Minnesota Statute § 237.12, subdivision 3**

As part of developing the record and identifying contested issues of material fact, the Commission will direct local service providers to file copies of the calculations they relied on to develop their current CCLCs. In particular, the local providers should provide calculations showing how they apportioned 1) their costs of local exchange facilities used in connection with long-distance telephone services, including facilities connecting a customer to local switching facilities, and 2) their common costs, as specified in Minnesota Statute § 237.12, subdivision 3, to generate their current CCLC rates.

### **4. Department's table**

As noted above, the Department submitted for the Commission's review a table stating, for each of Minnesota's telephone companies, the following information:

- Total number of retail lines.
- Total operating revenues.
- Operating revenues per line.
- Total CCLC revenues.
- CCLC revenues per line.
- CCLC as a percentage of total revenues.
- Estimated total monthly cost per line.

According to the Department, the data on the table came from the companies' annual reports for 2002. Because the table contained data that the companies had designated as trade secret, the Department did not provide copies of the document to all parties or offer it into the record.

The Commission commends the Department for assembling the table; it contains the kinds of information that the parties have urged the Commission to consider in reforming CCLC rates. The Commission will ask the Department to take additional steps to enhance the table's utility.

First, the Department should identify the telephone companies that are governed by an Alternative Form of Regulation (AFOR) plan under Minnesota Statutes §§ 237.76-775. Such plans give a telephone company some discretion to adjust its own rates. This information would be useful in identifying the companies that would have the discretion to adjust their own rates if their access revenues declined.

Second, the Department should list each company's basic local service rate. Many local service providers claim that they will seek to recover some portion of its lost access revenues through increases in basic local service rates. By knowing what those current rates are, the Commission could better appreciate the effects of any anticipated changes.

Third, the Department should estimate each company's rate of return. This information may prove useful to anticipating the extent to which a telephone company would need additional revenues to offset a reduction in access charge revenues.

Fourth, the Department should identify each provider's switched access rates. This information may provide broader context for access charge reform generally.

Fifth, the Department should file this table as part of this docket, taking the necessary steps to protect the trade secret data from unwarranted disclosure. By filing the document, the Department would make it part of the official record of this case, permitting the Commission to consider it when reaching decisions about access charge reform.

Finally, the Department should make the staff members who contributed to the table available for cross-examination. The parties should have a fair opportunity to understand the source of the information in the table so that they can challenge the information or place it in context.

The Commission anticipates that this table will greatly facilitate the future analysis of the CCLC.

### **C. Negotiations**

The Commission favors resolving issues through negotiation where feasible and in the public interest. In executing its regulatory duties regarding telecommunications, the Commission seeks to encourage voluntary resolution of issues between and among competing providers and

discourage litigation.<sup>6</sup> In response to the local service providers' broad interest to have an opportunity to seek a mutually-agreeable reform of the CCLC, the Commission will direct parties to enter into negotiations. The Commission acknowledges AT&T/MCI's dissatisfaction with the pace of negotiations to date. Consequently, the Commission will direct all parties to report on the status of the negotiations within 90 days of the referral to the OAH to ensure that steady progress is made.

#### **D. Further scheduling**

At its meeting on January 22, 2004, the Commission expects to make its final referral of this matter to the OAH identifying the issues to be developed. However, the Commission will authorize the Executive Secretary to set the specific dates in this docket and generally to manage case's progress, bringing the question of issues development back to the Commission as quickly as possible.

The Commission will so order.

### **ORDER**

1. The Commission's investigation into the appropriate level of the CCLC will be referred to the Office of Administrative Hearings (OAH) for a contested case proceeding. The Commission will ask the OAH to convene a prehearing conference no later than 120 days after the referral, and to provide the Commission with a report and recommendation within six months of the prehearing conference.
2. By January 12, 2004, the parties shall file comments on the specific factual questions that should be referred to the OAH,
3. By January 12, 2004, local service providers shall file copies of the calculations they relied on to develop their current CCLCs, including any calculations showing how they apportioned 1) their costs of local exchange facilities used in connection with long-distance telephone services, including facilities connecting a customer to local switching facilities, and 2) their common costs.
4. By January 12, 2004, the Department shall file an amended table stating, for each telephone company,
  - whether the company is regulated according to an Alternative Form of Regulation plan,
  - the company's rates for monthly basic local service,

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<sup>6</sup> Minn. Stat. § 237.011(8).

- the Department's estimate of the company's rate of return on investment, and
- the company's switched access rates.

The Department shall then make the people who compile the table available for cross-examination.

5. Parties shall negotiate over the appropriate level of the CCLC, and shall file a report on the status of their negotiations within 90 days of the referral to the OAH.
6. The Executive Secretary is authorized to set and change the procedural schedule, and to manage the proceeding's progress.
7. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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