

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Request for Service in
Qwest's Tofte Exchange

ISSUE DATE: January 28, 2004

DOCKET NO. P-421/CP-00-686

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On May 31, 2000, a petition, signed by approximately 70 persons with property on several lakes north of Lutsen, in rural Cook County, was filed with the Commission. The petitioners requested wireline service to homes on several lakes north of Lutsen, Minnesota. The lakes are within the Tofte telephone exchange service territory, which is assigned to Qwest Corporation (Qwest). Qwest is also designated an Eligible Telecommunications Carrier (ETC) in this area.

On December 14, 2000, Qwest Corporation (Qwest) filed its response to the request for service in the Tofte area. Qwest estimated the cost to provide basic telephone service to 68 residences in Qwest's unserved Tofte exchange was approximately \$2.2 million, using a buried cable design.

On June 21, 2002, the Commission issued its **ORDER REQUIRING SERVICE TO THE UNSERVED AREA OF QWEST'S TOFTE EXCHANGE AND REQUIRING CUSTOMER CONTRIBUTION**. Among other things, the Order required Qwest to provide service in the unserved area of the Tofte exchange and required petitioners to share in the cost of extending service to the unserved area by paying a one-time charge of \$55.00 per line and \$0.51 per foot from the point where Qwest's service line passes the property of a customer wanting service (assumed to be the local access road). The Order also set forth a schedule for engineering and installation, and required a minimum transmission rate of 14.4 kbs.

On July 1, 2002, Qwest filed a request for Reconsideration, Request for Stay and Request for Clarification.

On August 29, 2002, the Commission issued its **ORDER REQUIRING PROPOSAL**, which granted reconsideration and required Qwest to set forth proposed prices for extending service to Tofte residents in the unserved areas of the Tofte exchange and indicate the number of people in that area willing to sign up for services at those prices.

On September 6, 2002, Qwest filed its conditional proposal to provide service to the Tofte petitioners and sent its proposal and solicitation for service to the Tofte petitioners.

On October 31, 2002, the Commission issued its **ORDER REJECTING PROPOSAL AND REAFFIRMING PREVIOUS ORDER**.

On November 27, 2002, Qwest appealed the Commission's June 21, 2002 and October 21, 2002 Orders requiring the extension of service to the unserved area of the Qwest Tofte exchange.

On July 22, 2003, the Minnesota Court of Appeals reversed and remanded the Commission's Orders.¹ The Court directed that the Commission determine an allocation of costs that is fair and reasonable and that follows the tariff provisions. Further, the Court directed that Qwest must submit a proposal and provide data from which the Commission can make a determination about how much of the costs need to be recovered to make the investment prudent while remaining reasonable to petitioners.

On November 4, 2003 the Commission issued a notice requiring Qwest to provide a proposal and data regarding the unserved area of the Tofte exchange.

On December 5, 2003, Qwest submitted its proposal and data regarding the unserved portion of the Tofte exchange.

On December 15, 2003, comments were filed by petitioners Anthony Ross and Kim Wolff.

On December 17, 2003, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) requested an extension of the comment period to January 21, 2004.

On December 23, 2003, the Commission issued a notice requiring further data and suspending the comment period in this matter.

This matter came before the Commission on January 15, 2004.

FINDINGS AND CONCLUSIONS

I. Jurisdiction, Grounds to Investigate, and Referral for Contested Case Proceedings

The Commission has jurisdiction over the request for service by residents in the unserved areas of the Tofte exchange under Minn. Stat. § § 237.06 and 237.081, Subd. 4.

¹ *In the Matter of the Request for Service in Qwest's Tofte Exchange*, 666 N.W.2d 391, (Minn. App. 2003).

The Commission is further reviewing this matter pursuant to the July 22, 2003 Minnesota Court of Appeals decision reversing and remanding the Commission's June 21, 2002 ORDER REQUIRING SERVICE TO THE UNSERVED AREA OF QWEST'S TOFTE EXCHANGE AND REQUIRING CUSTOMER CONTRIBUTION, and the Commission's October 31, 2002 ORDER REJECTING PROPOSAL AND REAFFIRMING PREVIOUS ORDER. The Court of Appeals directed the Commission to determine an allocation of costs that is fair and reasonable and that follows the tariff provisions, which allow Qwest to charge line extension and excess construction charges so as to make its provision of these services a prudent investment.² Further, the Court directed that Qwest submit a proposal and provide data from which a determination can be made about how much of the costs need to be recovered to make the investment prudent while remaining reasonable to the petitioners.³

The Commission finds that the record necessary for the Commission to make a decision regarding this matter is best developed through formal evidentiary hearings. The Commission therefore will refer this matter to the Office of Administrative Hearings (OAH) for contested case proceedings.

II. Issues to be Addressed

Parties shall address all issues that are relevant to this matter and to the Court of Appeals decision of July 22, 2003, which reversed and remanded this matter to the Commission.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Richard C. Luis. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2542.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

² Id. at 398.

³ Id. at 397.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

Discovery and Informal Disposition

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to John Lindell, Public Utilities Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 297-1398; or Steve Alpert, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-3258.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, Subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Qwest, the Minnesota Department of Commerce, and the Residential and Small Business Utilities Division of the Office of the Attorney General. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Wednesday, February 4, 2004, at 9:30 a.m. in the Small Hearing Room in the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The petitioners in the unserved area of the Tofte exchange continue to be without wireline service to their homes. To remedy this, the Commission seeks to issue its Order on Remand as soon as possible, consistent with a fair process, an adequate record, and thoughtful and deliberate decision making. Therefore, the Commission respectfully asks the Administrative Law Judge to submit his final report as soon as possible so that the Commission may then issue its Order as soon thereafter as possible.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.
2. A prehearing conference shall be held on Wednesday, February 4, 2004 at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota, 55101.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

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MPUC Docket No. P-421/CP-00-686

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Richard C. Luis, Office of Administrative Hearings, Suite 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 349-2542.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____