

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

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

ISSUE DATE: October 8, 2004

DOCKET NO. P-999/CI-04-852

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On August 25, 2004, the Commission issued a notice announcing its investigation of switched access charges and proposing to send the matter to the Office of Administrative Hearings (OAH) for a contested case proceeding. The Commission served the notice on providers of telecommunications services in Minnesota.

On September 3, 2004, AT&T of the Midwest, Inc. and Time Warner Telecommunications of Minnesota, LLC, filed comments recommending that the Commission expand the scope of the docket to address special access.

The matter came before the Commission on September 23, 2004.

**FINDINGS AND CONCLUSIONS**

**I. Jurisdiction**

The Commission has jurisdiction over this matter pursuant to Minn. Stat. §§ 237.12 (Service Connection between Telephone Companies) and 237.081 (Commission Investigations).

**II. Referral for Contested Case Proceedings**

Access charges refer to the compensation long distance companies pay local telephone companies for access to the local network to originate and terminate long distance telephone calls. There are various types of access charges in Minnesota, including switched access charges, common carrier line charges (CCLC), and special access charges.

A local service provider imposes a *switched access charge* for typical calls that must be routed by the provider's computer, or "switch," across the "public switched telephone network." Switched access consists of switching (the use of the carrier's computer to route the call) and transport (the use of the carrier's lines to transmit signals between the switch and another provider's facilities). The local service provider imposes *CCLC*, putatively for the use of the wire that connects a customer's premises to the local service provider's switch. And the local service provider imposes a *special access charge*, also called *non-switched access charge* or *private line charge*, for calls that are always routed to the same place across a dedicated line and do not require the use of the provider's switch.

Competitors complain that access charges exceed their costs, resulting in a subsidy that benefits access providers to the detriment of access purchasers.

The Commission has already initiated a separate proceeding to address many aspects of access charge reform, including CCLC,<sup>1</sup> and will open another docket to address special access.<sup>2</sup> The Commission opened the current investigation specifically to explore the appropriateness of intrastate switched access. Because special access will be addressed separately, the Commission will decline to expand the scope of the current docket at this time.

Finding contested issues of material fact regarding the appropriate charges for switched access, the Commission will refer this matter to the OAH for a contested case proceeding.

### **III. Issues to be Addressed**

Parties shall address the following issues:

- the cost of intrastate switched access,
- the extent to which intrastate switched access charges should be changed to reflect their cost,
- the period over which these changes should occur,

and related matters. The OAH shall make a recommendation as to the resolution of these issues.

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<sup>1</sup> Docket No. P-999/CI-98-674 *In the Matter of a Commission Investigation of Intrastate Access Charge Reform*.

<sup>2</sup> Docket No. P-999/CI-04-1609 *In the Matter of a Commission Investigation of Special Access Charges*.

#### **IV. Procedural Outline**

##### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 349-2544.

##### **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. 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](http://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 Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)282-2151; or Brian Sande, 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**

Parties to this case are all local service providers that charge for intrastate switched access, as well as 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**

The Commission requests that the ALJ set the time, date, and place of any prehearing conference in this matter after consultation with the Commission and intervening parties. 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.

**V. 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.

**VI. 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. 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), or 1-800-627-3529 (MN relay service).

**ATTACHMENT A**

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

In the Matter of a Commission Investigation of  
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MPUC Docket No. P-999/CI-04-852

OAH Docket No.

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Steve M. Mihalchick, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,  
Minneapolis, Minnesota 55401; (612) 349-2544

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: \_\_\_\_\_