

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint by the
Minnesota Independent Equal Access
Corporation, Inc. Against Qwest
Communications Regarding Centralized Equal
Access Charges

ISSUE DATE: May 3, 2006

DOCKET NO. P-421/C-06-413

ORDER ASSERTING JURISDICTION,
FINDING REASONABLE GROUNDS TO
INVESTIGATE AND VARYING TIME FOR
FILING ANSWER

PROCEDURAL HISTORY

On March 15, 2006, the Minnesota Independent Equal Access Corporation, Inc. (MIEAC) filed a complaint against Qwest Communications (Qwest) alleging that Qwest was inappropriately billing MIEAC for special access charges by a sum of more than \$500,000 (at the time of the filing). MIEAC holds that the bill is growing at a rate of approximately \$20,000 per month.

The Commission met on April 20, 2006 to consider this matter.

FINDINGS AND CONCLUSIONS

I. MIEAC'S COMPLAINT

In its Complaint, MIEAC alleged that beginning in August 2004, Qwest has been violating Commission Orders by billing MIEAC rather than Interexchange Carriers (IXCs) for facilities used by the IXCs to connect participating local exchange carriers (LECs) to the Toll Termination Point (TTP) of the MIEAC facilities. MIEAC added that Qwest has been billing for these facilities as special access facilities, rather than as switched access facilities as required by Commission Orders.

MIEAC stated that in August 2004, Qwest presented MIEAC with a bill totaling in excess of \$300,000 for these facilities and has continued to bill at special access rates at the rate of approximately \$20,000 per month, for a current total of more than \$500,000.

MIEAC asked that the Commission 1) immediately require Qwest to eliminate the inappropriate special access charges for Local Connection Facilities from both its past and future billings to MIEAC and Onvoy, 2) order Qwest to comply with the Commission's Centralized Equal Access

(CEA) Orders by continuing to apply switched access charges for the facilities in question, 3) prohibit Qwest from refusing to provision new Onvoy service based upon the parties' dispute herein, and 4) grant such other and further relief as the Commission may find appropriate under the circumstances.

II. JURISDICTION AND GROUNDS TO INVESTIGATE

Minn. Rule § 7829.1800, subd. 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.

In response to MIEAC's formal complaint, therefore, the Commission must determine whether it has jurisdiction over this complaint and whether there are reasonable grounds to investigate MIEAC's allegations.

The Commission clearly has jurisdiction to determine whether its Orders have been violated and, if so to determine appropriate consequences as provided by law. Qwest did not assert that the Commission did not have jurisdiction in this matter.

As to whether reasonable grounds exist to warrant investigation, the Commission finds that such grounds do exist. MIEAC has provided adequate factual basis, notarized allegations of fact that raise colorable claims against Qwest.

III. ALTERNATE SCHEDULE FOR ANSWER

Minn. Rules, Part 7829.1800, subp. 2 states:

On concluding that it has jurisdiction over the matter and that investigation is warranted, the commission shall serve the complaint on the respondent, together with an order requiring the respondent to file an answer either stating that it has granted the relief the complainant requests, or responding to the allegations of the complaint. The answer must be filed with the commission and served on the complainant, the department, and the Residential Utilities Division of the Office of the Attorney General within 20 days of service of the complaint and order.

While the Commission will serve the complaint on the respondent Qwest as provided in the rule, the Commission will not require Qwest to file an Answer to the Complaint within 20 days of receiving this Order and the attached Complaint as the rule further requires. Instead, the Commission will vary the rule's 20-day requirement and direct Qwest to either file an answer by June 12, 2006 or, by the same date, a joint statement with MIEAC that the issue has been resolved to the parties' satisfaction and that the Complaint may be dismissed.

The Commission finds that it has good cause, pursuant to Minn. Rules, Part 7829.3100, to vary the rule's requirements in this way. Since the parties are willing to discuss settlement at least between now and June 12, 2006, requiring Qwest to abide by the 20 day requirement to file an Answer could potentially interfere with those discussions. It is possible that the variance will promote settlement of the matter, which is in the public interest. No provision of law would be violated granting the variance.¹

To clarify, replies from MIEAC would be due 20 days from the filing of Qwest's Answer, if any.

ORDER

1. The Commission asserts jurisdiction over MIEAC's complaint and finds reasonable grounds to investigate MIEAC's allegations.
2. MIEAC's Complaint is attached to this Order and hereby served upon Qwest.
3. The 20 days to answer requirement of Minn. Rules 7829.1800, subp. 2 is hereby varied. Qwest shall either file its Answer to MIEAC's Complaint by June 12, 2006 or file a joint statement with MIEAC that the matter has been resolved to the parties' mutual satisfaction and, therefore, may be dismissed.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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¹ Minn. Rules, Part 7829.3100.