

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 Desktop
Media, Inc. to Prohibit Qwest from
Disconnecting Service

ISSUE DATE: December 12, 2006

DOCKET NO. P-421/C-06-1455

ORDER DEFERRING ACTION ON
COMPLAINT

PROCEDURAL HISTORY

On October 18, 2006, Desktop Media, Inc. (Desktop) filed a complaint with the Commission asserting that Qwest Corporation (Qwest) had threatened to commence the process of disconnection of an unbundled dark fiber circuit used by Desktop unless Desktop responded by October 20.

On October 23, 2006, Qwest, via a letter to the Commission, responded.

On November 30, 2006, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

Desktop's complaint states that in October 2005, Qwest and Desktop entered into an agreement under which Qwest provides dark fiber to Desktop. During those negotiations, Desktop asserts that Qwest guaranteed that a dark fiber circuit between Winona, Minnesota, and Austin, Minnesota, would not be treated as unimpaired under the Federal Communications Commission rules implementing the Federal Telecommunications Act of 1996.

Desktop asserts that Qwest has recently communicated that a segment of the aforementioned Winona to Austin line – from Rochester to Owatonna – would be treated as unimpaired, and would therefore be considered commercial dark fiber, and subject to the parties' commercial agreement. Alternatively, Qwest would disconnect the circuit. Desktop requested a Commission investigation of Qwest's threat to disconnect the unbundled dark fiber circuit.

Qwest filed a response¹ on October 23, 2006, explaining that it would not disconnect Desktop's circuit without first obtaining proper authorization from the Commission and seeking a dismissal of

¹ Qwest has not yet formally answered the complaint.

the complaint. Qwest stated that an ongoing Commission proceeding, Docket No. P-999/CI-06-685, will determine which wire centers in Minnesota are unimpaired. The impairment determinations in that docket will affect competitive local exchange carriers, such as Desktop's, access to dark fiber circuits.

Qwest asserted that its recent communications to Desktop and other competitive local exchange carriers were intended only to convey its intent to commence the *process* for disconnection of circuits in unimpaired wire centers, not to actually disconnect them. Qwest noted that the impairment determinations would first be made in the ongoing wire center impairment docket. Only after a determination is made that a wire center was unimpaired, would Qwest and the competitive local exchange carrier have to determine whether circuits should be converted to commercial dark fiber or be disconnected.

At the Commission's November 30 meeting, the Department of Commerce (the Department) asserted that some of the issues raised in Desktop's complaint will carry forward, even after resolution of the wire center case. The Department recommended that the Commission defer action on this matter until after its consideration of the wire center issues in Docket No. P-999/CI-06-685.

After consideration of the foregoing, the Commission will adopt the recommendation of the Department and defer further action on this matter until after its consideration of the wire center issues in Docket No. P-999/CI-06-685.

ORDER

1. The Commission will defer action on this matter until after its consideration of the wire center issues in Docket No. P-999/CI-06-685.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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