

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
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 31, 2007

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

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On March 15, 2006, the Minnesota Independent Equal Access Corporation, Inc. (MIEAC), a wholly owned subsidiary of Onvoy, Inc. (Onvoy) filed a complaint alleging that Qwest Communications (Qwest) was inappropriately billing MIEAC for special access charges.

On May 3, 2006, the Commission concluded that MIEAC had raised issues about matters within the Commission's jurisdiction and found reasonable grounds for an investigation.¹

The Commission also extended the usual timelines for parties to respond to filings.²

On March 23, 2007, Qwest answered the complaint.

On March 29, 2007, MIEAC replied to Qwest's answer.

On April 12, 2007, the Commission received comments from Qwest and the Minnesota Department of Commerce (the Department).

The Commission met on May 10, 2007, to consider this matter.

¹ Order Asserting Jurisdiction, Finding Reasonable Grounds to Investigate and Varying Time for Filing Answer.

² Id.; Order Extending Time Lines (June 14, 2006).

FINDINGS AND CONCLUSIONS

I. BACKGROUND

When a person dials a telephone number, a computer called a “switch” analyzes the dialed number to determine where it should be routed. The North American Numbering Plan does not provide for assigning telephone numbers that begin with the digit 1. When a caller dials a 1 at the beginning of a phone number, the switch interprets this digit as a signal to analyze whether the call should be routed to a carrier that would connect the call to switches in a remote calling area.

Historically, those calls would be routed to a Bell Operating Company (BOC), or to the company’s “long lines” division, AT&T. To permit firms to compete in carrying calls between local calling areas (“interexchange calls”), however, this Commission and the Federal Communications Commission (FCC) directed incumbent telephone companies to start providing competitive interexchange carriers (IXCs) with the same access to customers that the companies had previously provided to AT& T. With “equal access,” long-distance calls from the subscriber’s premises starting with the digit 1 would be routed to the subscriber’s designated IXC.

II. POSITIONS OF THE PARTIES

A. MIEAC

MIEAC alleged that beginning in August 2004, Qwest has been violating Commission Orders by billing MIEAC rather than 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.

B. Qwest

Qwest agreed that the Commission has the authority to resolve the Complaint. Qwest denied many of the factual allegations of the Complaint, arguing that the allegations do not fully and accurately recite the complete terms of the referenced Commission Order, and constitute legal interpretations and advocacy, not factual allegations.

Qwest generally acknowledged that it received switched access revenue for some of these facilities during a portion of the fourteen-year period in question. Qwest asserted that because it does not switch the traffic carried by these circuits, it is not in possession of all information relevant to the billing issues. Qwest admitted that it did not charge MIEAC or Onvoy private line rates for these private line facilities prior to 2004 when Qwest's internal audit revealed that these private line facilities were not being billed at private line rates. Finally, Qwest denied that it had been unjustly enriched by charging private line rates.

C. The Department

The Department supported sending the matter to an Administrative Law Judge for contested case proceedings and ordering immediate discovery. The Department also agreed to provide informal mediation if requested by the parties, or to work with the parties to develop a formal mediation process.

III. Commission Action

A. Jurisdiction, Consolidation and Referral for Contested Case Proceedings

The Commission has jurisdiction over the provision of intrastate telecommunications services in Minnesota pursuant to Minnesota Statutes Chapter 237, including in particular Minnesota Statutes §§ 237.081, subd. 1a, 237.121(a)(4) and 237.61.

The Commission finds that it cannot resolve the issues raised by the parties on the basis of the record before it. The Commission is persuaded that those issues turn on specific facts that are best developed in formal evidentiary hearings. In the interest of administrative efficiency, the Commission will refer the matter to the OAH for a contested case proceeding.

B. Issues to be Addressed

The issue is whether Qwest has violated Commission Orders by billing MIEAC rather than IXCs for facilities used by the IXCs to connect participating local exchange carriers (LECs) to the Toll Termination Point (TTP) of the MIEAC facilities as special access facilities, rather than as switched access facilities.

The parties may also raise and address other issues relevant to this matter.

C. Procedural Outline

1. Administrative Law Judge

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

2. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minnesota Statutes §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minnesota 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, Minnesota 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 site on the World Wide Web 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 Minnesota 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 Minnesota Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minnesota 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) 201-2218; or Alison Archer, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-5945.

- *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 Minnesota Statutes § 14.60, subdivision 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 evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Exhibit 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.

3. Parties and Intervention

The current parties to this case are MIEAC, Qwest and the Department. 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.

4. Prehearing Conference

Judge Mihalchick will convene a prehearing conference on June 5, 2007, at 9:30 a.m. at the office of the Minnesota Public Utilities Commission, 121 7th Place East, St. Paul, Minnesota, 55101, in the Small Hearing Room. Directions to the Commission's offices can be found at the Commission's site on the World Wide Web at www.puc.state.mn.us/about/directions.htm.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations

and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

D. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minnesota Statutes §§ 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.

E. 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 Minnesota Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. Finding jurisdiction over these matters, the Commission hereby refers this matter 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) 201-2202 (voice) or 1-800-627-3529 (MN 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/C-06-413

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 55401-2138; (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 AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____