

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of Verified Complaint
Requesting Permission to Discontinue
Service and an Order Enforcing Tariff and
Requiring Payment from Global Crossing

ISSUE DATE: June 1, 2007

DOCKET NO. P-5025,437/C-06-1395

ORDER APPROVING STIPULATION FOR
DISMISSAL

PROCEDURAL HISTORY

On October 3, 2006, Digital Telecommunications, Inc. (DTI) filed a verified complaint against Global Crossing Limited (Global Crossing) and all of its subsidiaries seeking relief for Global Crossing's alleged refusal to pay tariffed charges.

On November 2, 2006, the Commission issued its ORDER REQUIRING ANSWER TO COMPLAINT AND SETTING TIME LINES. In that Order, the Commission asserted its jurisdiction over the matter and found that it had reasonable grounds to investigate DTI's allegations. The Commission directed Global Crossing to file an answer and gave all interested parties an opportunity to file comments.

On January 10, 2007, Global Crossing filed its Answer to the Complaint and moved to dismiss it. On January 31, 2007, DTI filed a Reply to Global Crossing's Answer.

On February 1, 2007, the Minnesota Department of Commerce (the Department) filed its Comments. The Department argued that there were no factual disputes in this case and recommended that the Commission take a two-stage approach: first, determine whether DTI is legally justified in charging access charges to Global Crossing; and second, examine whether DTI should disconnect Global Crossing.

On April 11, 2007, DTI and Global Crossing jointly filed a Stipulation for Dismissal of the case (Stipulation).

On April 23, 2007, the Department filed Comments seeking clarification of paragraph 3 of the Stipulation.

On May 23, 2007, DTI filed comments in response to the Department's request for clarification.

The Commission met on May 24, 2007 to consider this matter.

FINDINGS AND CONCLUSIONS

I. The Parties' Stipulation

Under terms of the Stipulation, Global Crossing has agreed to pay DTI a sum of \$290,050.64 as full and complete settlement of all past claims by DTI. Global Crossing has also agreed to pay ongoing access charges to DTI. A copy of the Stipulation for Dismissal is attached and incorporated herein.

II. The Department's Comments

The Department stated that it was not a part of settlement discussions between the parties but had reviewed the Stipulation for Dismissal and recommended that the Commission approve it after clarifying paragraph 3. Paragraph 3 states:

Billings or invoices made by one party or its affiliate will not be offset against, applied as a credit to, or otherwise assigned or transferred to billings or invoices made by the other party or its affiliate without the prior consent of both parties.

First, the Department asked that the Commission clarify that any offset to access charges that may occur through written agreement cannot change the effective access rates or other tariffed terms regarding the provision of switched access unless DTI revises its access tariff as required under state law.

Second, the Department asked that the Commission clarify that any offset agreement should not alter the revenues reported in company financial statements.

III. DTI's Clarification in Response to the Department's Concerns

On May 23, 2007, DTI filed a response to the Department's request for clarification of paragraph 3 of the Stipulation.

Regarding the Department's first concern, DTI stated that the parties intended paragraph 3 only to be a constraint on billing offsets taken by one party without the consent of the other. DTI stated that the parties did not intend paragraph 3 to lead to billing that does not follow the tariffed rate. DTI stated any offset to access charges that may occur through written agreement will not change the effective access rates or other tariffed terms regarding the provision of switched access.

Regarding the Department's second concern, DTI stated that any offset is not intended to alter the reporting of regulated revenues received from the provision of services. Revenues reported to the Department for purposes of determining regulatory assessments or taxes would not be affected and would continue to be reported as required by law.

IV. Commission Analysis and Action

Minnesota Statutes §237.076, subd. 2 states that the Commission may accept a settlement upon a finding that to do so is in the public interest and is supported by substantial evidence. Minn. Stat. §237.076 subd. 2 also allows the Commission to modify a settlement, subject to the approval of the parties.

The Commission agrees with the Department that paragraph 3 warrants clarification and further finds that the Department's recommended meaning appropriately clarifies the paragraph.

The Commission notes that DTI has endorsed the Department's clarification, assuring that the parties intend to implement paragraph 3 consistent with the Department's recommended clarification.

Rather than altering the wording of paragraph 3, then, the Commission will simply adopt the Department's clarification as the definitive meaning of paragraph 3, noting the parties' agreement with that clarification.

ORDER

1. Paragraph 3 of the Stipulation for Dismissal is clarified as follows:

First, any offset to access charges that may occur through written agreement will not change the effective access rates or other tariffed terms regarding the provision of switched access unless DTI revises its access tariff as required under state law.

Second, any offset agreement will not alter the revenues reported in company financial statements.

2. The Commission hereby approves the parties' Stipulation for Dismissal with prejudice, as clarified in Order Paragraph 1 of this Order with respect to paragraph 3 of the Stipulation. A copy of the Stipulation is attached and incorporated herein.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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