

OAH Docket No. 12-2500-10956-2
MPUC Docket No. P-442, 5231, 3167, 466, 421/C1-96-1540

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of a Generic Investigation
of U S West Communications, Inc.'s
Cost of Providing Interconnection and
Unbundled Network Elements

PREHEARING ORDER

The above-entitled matter came on for prehearing conference before Administrative Law Judge Steve M. Mihalchick on March 14, 1997, in the Minnesota Public Utilities Commission's Large Hearing Room, 121 Seventh Place East, Suite 350, St. Paul, Minnesota.

The following persons appeared at the prehearing conference:

David G. Seykora, U S WEST, Inc., 200 South Fifth Street, Room 395, Minneapolis, MN 55402, for U S West Communications, Inc. (U S West).

John B. Van de North, Jr., and Patrick T. Kampmeyer, Briggs and Morgan, 2200 First National Bank Building, St. Paul, MN 55101, for AT & T Communications of the Midwest, Inc. (AT&T).

Gregory R. Merz, Gray, Plant, Mooty, Mooty & Bennett, 3400 City Center, 33 South Sixth Street, Minneapolis, MN 55402, for MCIMetro Access Transmission Services, Inc. (MCI).

Scott Wilensky, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130 for the Office of the Attorney General, Residential Utility and Small Business Division (OAG).

Ellen Gavin, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, for the Department of Public Service (DPS).

Michael J. Bradley, Moss & Barnett, 4800 Norwest Center, 90 South Seventh Street, for the Minnesota Independent Coalition (MIC).

Gena M. Doyscher, Frontier Telemanagement, 1221 Nicollet Mall, Suite 300, Minneapolis, MN 55403, for Frontier Local Services, Inc., and Enhanced Telemanagement, Inc., d/b/a Frontier Telemanagement (Frontier Telemangement).

Donald Low, Senior Attorney, Sprint Communications Company L.P., 8140 Ward Parkway 5E, Kansas City, MO 64114, for Sprint Communications Company L.P. and United Telephone Company of Minnesota (Sprint). (By telephone.)

Linda Gardner, United Telephone Company, 5454 West 110 Street, Overland Park, KS 66211, for United Telephone Company of Minnesota (United). (By telephone.)

Mark Fournier, Analyst, Minnesota Public Utilities Commission, 350 Metro Square Building, St. Paul, MN 55101, for the Commission staff.

James M. Strommen and Daniel L. Greensweig, Kennedy & Graven, Chartered, 470 Pillsbury Center, 200 South Sixth Street, Minneapolis, MN 55402, for the Suburban Rate Authority (SRA).

The following persons not appearing at the prehearing conference have filed Notices of Appearance:

Kristine L. Eiden, Hatch, Eiden & Pihlstrom, One Financial Plaza, Suite 950, 120 South Sixth Street, Minneapolis, MN 55402, for Frontier Local Services, Inc., and Enhanced Telemanagement, Inc., d/b/a Frontier Telemanagement (Frontier Telemanagement).

Michael J. Shortley, III, Frontier Corporation, 180 South Clinton Ave, Rochester, NY 14646, for Frontier Telemanagement, Frontier Local Services, Inc. (Frontier Telemanagement), and Frontier Communications of Minnesota, Inc. (Frontier).

Unable to attend the prehearing conference were:

Richard M. Rindler and Lawrence R. Freedman, Swidler and Berlin, Chartered, 3000 K Street NW, Suite 300, Washington, DC 20007, for MFS Intelenet, Inc. (MFS).

Discussion was held among the participants in the prehearing conference. Having considered all the comments and agreements made during the prehearing conference, and documents filed since that time, the Administrative Law Judge makes the following Prehearing Order:

PARTIES

1. The parties to this proceeding named in the Commission's Notice and Order for Hearing of March 12, 1997, in this matter are AT&T, Frontier, Frontier Telemanagement, MCI, MFS, DPS, MIC, OAG, Sprint, and U S West.
2. On March 18, 1997, a Petition of the Suburban Rate Authority for Leave to Intervene was filed. The SRA is an association of 47 municipal corporations in the Twin

City suburban area of Minnesota and most are located within the U S West service area. It appears that they have a direct and substantial interest in the issue of geographic deaveraging and similar issues that will be addressed in this proceeding that will not be adequately protected by the existing parties. The SRA is granted full party status in this proceeding.

3. On March 21, 1997, a Petition to Intervene of TCG Minnesota, Inc. (TCG), was filed by David L. Sasseville, Lindquist & Vennum P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-2205, and Douglas W. Trabaris, Senior Regulatory Counsel, Teleport Communications Group Inc., 233 South Wacker Dr., Suite 2100, Chicago, IL 60606. TCG's parent corporation operates digital networks in 48 metropolitan markets. TCG intends to operate in Minnesota as a competitive local exchange carrier. It claims to have interests different from other participants in this hearing. While there are a number of CLECs already parties to this proceeding, the nature of this proceeding as a generic proceeding to determine U S West's costs means that the results of the proceeding will essentially establish the prices to be paid to U S West by all the CLECs for interconnection and unbundled network elements. That very large impact justifies TCG's admission as a party with full rights to file testimony and briefs. However, it may be necessary to limit duplicative cross-examination by similarly-situated parties. That will be determined at a future date. TCG is granted full party status.

4. On March 21, 1997, a Petition to Intervene of the Minnesota Business Utility Users Council (MBUUC) was filed by William E. Flynn and Kimberly S. Freise, Lindquist & Vennum P.L.L.P., 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-2205. The MBUUC is an unincorporated association of business telecommunication users that as end users have an interest in the prices to be charged by U S West for interconnection and unbundled network elements. No present party specifically represents this point of view, although it will likely be similar to that of those CLECs that will concentrate on the urban business market. The MBUUC is granted full party status, again with the notice that it may be necessary to group and consolidate cross-examination.

5. The final date for filing Petitions to Intervene announced at the prehearing conference was March 21, 1997. Any person petitioning to intervene after that date may be restricted as to the scope of their participation.

6. Any person allowed to intervene in this proceeding after the date of this Order shall be bound by the terms of this Order.

SCHEDULE

7. All proposed cost studies and supporting material are due March 31, 1997. Each cost model submitted must be operational by all parties on or before March 31, 1997. The sponsoring parties must provide the following for each cost model to be considered operational:

- a) cost model software programs, including application software if necessary;
- b) a computer and an operating system at the sponsoring party's location if necessary;
- c) the input data used in the filed cost studies;
- d) a written explanation of the assumptions, processes, and calculations of the cost model, including the engineering model, if any, underlying the cost model;
- e) a manual explaining the use of the cost model programs;
- f) a demonstration that each model duplicates all of the cost model outputs included in the cost studies;
- g) a chart showing which cost elements are related to, or incorporated by, the process in the interconnection contracts between U S West and AT&T, U S West and MCI, U S West and MFS, and U S West and Sprint; and
- h) testimony supporting the cost study.

8. No later than April 14, 1997, parties may notify the Administrative Law Judge that a cost study is not operational as required above. A conference will be scheduled promptly to resolve the matter.

9. April 23 - 25, 1997. Workshop presentations, MPUC Large Hearing Room unless otherwise notified. Proponents of the two cost studies shall make workshop or seminar type presentations regarding their cost studies. The presentations shall be under oath and reported. Clarifying questioning, but not cross-examination, shall be allowed.

- a) April 23, 1997, 9:00 a.m. to 11:30 a.m. and 1:00 p.m. to 4:30 p.m., U S West presentation.
- b) April 24, 1997, 9:00 a.m. to 11:30 a.m. and 1:00 p.m. to 4:30 p.m., AT&T and MCI presentation.
- c) April 25, 1997, 9:00 a.m. to 11:30 a.m., AT&T & MCI presentation or response.
- d) April 25, 1997, 1:00 p.m. to 4:30 p.m., U S West presentation or response.

10. Prefiled testimony shall be filed and served by overnight delivery by the following dates:

- a) July 14, 1997. Direct testimony regarding the cost studies of other parties and deaveraging.
- b) August 29, 1997. Rebuttal testimony of all parties.
- c) September 8, 1997. Surrebuttal testimony of all parties.

11. The evidentiary hearing shall commence September 15, 1997, at 9:00 a.m. in the MPUC Large Hearing Room and continue on consecutive days through September 23, 1997, as necessary.

12. The parties shall submit briefs and may submit proposed Administrative Law Judge Reports, appropriately referenced to the record, and the Administrative Law Judge shall issue his Report, by the following dates:

- a) October 14, 1997. Initial briefs of all parties.
- b) October 27, 1997. Reply briefs and proposed Administrative Law Judge Reports of all parties.
- c) November 14, 1997. Administrative Law Judge Report.

FILING OF DOCUMENTS

13. All prefiled testimony sponsored by all parties shall be filed with the Administrative Law Judge and served upon the parties in accordance with the schedule above. Except for good cause shown, all prefiled testimony shall be in question and answer format.

14. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

- a) Prior to the issuance of the Report of the Administrative Law Judge, the original and one copy of all documents shall be delivered or mailed to the Administrative Law Judge, along with 3½ inch, PC compatible, disks containing copies of the filed documents in Word 6.0 or Excel format.
- b) Following the Report of the Administrative Law Judge, the original of all documents shall be filed with the Executive Secretary of the Commission.
- c) Copies of all documents shall be served on the persons listed on the attached service list. The list will be revised as necessary by the Administrative Law Judge. Service shall be made according to the most current service list provided to the parties by the Administrative Law Judge.
- d) Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed to the

Administrative Law Judge or delivered to the Executive Secretary of the Commission.

e) Proof of service shall be filed with each filed document or within three business days thereafter.

15. One copy of any document or information filed with or supplied to the Commission or the Commission staff shall be served upon every party.

DISCOVERY

16. All requests for information shall be made in writing to the person from whom the information is sought with a copy of the request mailed to all parties of record and the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party and the Administrative Law Judge within ten calendar days after receipt of the request. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to all other parties unless specifically requested by a party. Information requests received after 3:00 p.m. on business days or on weekends or State holidays shall be considered to be received on the following business day, except that any U.S. Mail received during business hours shall be considered to be received on the same day.

17. In the event the information cannot be supplied within the ten business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motion may be made by telephone conference among the Administrative Law Judge and affected parties.

18. Further discovery may be had in accordance with Minn. R. 1400.6700 - 1400.6900 insofar as these provisions do not alter the special process for this proceeding established by this Order.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

19. Prefiled direct and rebuttal testimony shall not be bound into the record, but shall be received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties by facsimile no later than three days prior to commencement of the evidentiary hearing.

20. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct or rebuttal evidence shall not be offered in rebuttal or

surrebuttal testimony and exhibits. However, the parties may raise in rebuttal or surrebuttal testimony affirmative matters in response to new issues that arise on cross-examination during the course of the evidentiary hearing.

21. The order of testimony in the evidentiary hearing shall be determined at a later time.

EXAMINATION OF WITNESSES

22. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

23. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states in writing its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties prior to commencement of the evidentiary hearing. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony which is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

MISCELLANEOUS

24. Additional prehearing conferences may be held on dates determined by the Administrative Law Judge.

25. Parties are encouraged to stipulate to the admission evidence not in dispute and to narrow the scope of contested issues to the matters actually in dispute. Where appropriate, the parties shall file a joint statement of the stipulated facts and issues and identify the issues remaining to be resolved. All stipulations will be subject to acceptance by the Administrative Law Judge and review by the Commission, which shall include the opportunity for the Commission or its staff to examine any witness on the record irrespective of the existence of a stipulation between the parties with respect to such testimony.

Dated this 25th day of March, 1997

STEVE M. MIHALCHICK
Administrative Law Judge