

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint of AT&T  
Communications of the Midwest, Inc., against  
Qwest Corporation

**POST-HEARING ORDER**

This matter is before Administrative Law Judge Steve M. Mihalchick on Qwest's request to supplement the record. Qwest's request was filed August 30, 2001, by fax. AT&T and the Department filed responses by email on August 31, 2001. No hearing was held on the request.

Based upon the request and responses, and upon the previously existing record, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following

**ORDER**

**IT IS HEREBY ORDERED** that:

1. Qwest's request to supplement the record is **GRANTED** as follows.
2. Qwest shall file an affidavit of Mark Miller regarding his letter of August 29, 2001, to Carla Dickinson of AT&T. The affidavit shall attach a transcription of the August 9 voice mail from Ms. Dickinson or contain Mr. Miller's recollection of the contents of the voice mail, describe Mr. Miller's reasons for sending the letter of August 29, describe why it took 20 days to send, describe any other discussions or communications he had with Ms. Dickinson regarding upgrading the IMA, and describe any communications he had with Qwest employees, including counsel, regarding his understanding of and response to the voice mail. Mr. Miller may provide any other information relevant to the voice mail and his letter.
3. AT&T shall file an affidavit of Carla Dickinson regarding her voice mail message to Mr. Miller on August 9 and his letter to her of August 29, 2001. The affidavit shall contain Ms. Dickinson's recollection of the contents of the voice mail and her reasons for calling Mr. Miller that day, describe any other discussions or communications she had with him regarding upgrading the IMA, describe any communications she had with AT&T employees, including counsel, regarding her understanding of the voice mail and Mr. Miller's response. Ms. Dickinson may provide any other information relevant to the voice mail and letter.

4. The affidavits shall be filed with the Administrative Law Judge by fax to 612-349-2665 by 4:30 p.m. CDT on September 26, 2001. The other parties may be served by mail thereafter. The affidavits will be marked as hearing exhibits and made part of the record. No responses and no additional argument will be allowed.

Dated September 19, 2001

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STEVE M. MIHALCHICK  
Administrative Law Judge

### MEMORANDUM

The hearing ended July 27, 2001. Briefs were due August 31, replies September 21. On August 30, 2001, Qwest filed a letter stating that certain information had come to light, not available at time of trial, that demonstrated AT&T's lack of intention to enter the local market in Minnesota. Qwest noted that it has argued all along that AT&T's continued desire to use EDI version 6.0 for testing, even though Qwest now has later versions available, demonstrates that AT&T really isn't interested in market entry. Qwest attached a letter from Qwest Senior Account Manager Mark Miller to AT&T Manager Carla Dickinson, which Qwest described as "addressing developments with respect to that issue since trial." The letter contains one sentence:

This letter confirms your voice mail to me on August 9<sup>th</sup>, 2001 that AT&T does not plan on upgrading beyond IMA 6.0, and that the Minnesota UNE-P test will be completed on December 7, 2001.

Qwest's letter to the Administrative Law Judge did not make clear what its new evidence was. Presumably it's the Miller letter, but perhaps it's the voice mail and they'd like to offer that.

The Department argues that the evidence is not new and that it should be rejected because it took them 21 days to submit it. The Department is probably correct, but the submission is intriguing. Did Ms. Dickinson really say that AT&T would not be upgrading to a newer EDI if and when it proceeded to market entry? Did she mean to say that? Is this an example of the inability of Qwest and AT&T to communicate? Is this an attempt to misstate the other's intent? Is this just a rehash of old argument?

AT&T argues the evidence that it wishes to run its test using version 6.0<sup>[1]</sup> is not new, and that not moving to a newer version for testing proves nothing about market entry intent. AT&T then throws in it's own bit of new evidence to prove its argument,

stating that Qwest has “just succeeded in convincing the ROC executive committee, over the objection of the ROC Technical Advisory Group, that ROC should test version 7.0 of the interface and not the currently existing version 8.0.”

We can probably guess what Mr. Miller and Ms. Dickinson will say when we ask for a clarification of the voice mail and letter, but it is worth asking. If nothing else, it may be helpful in assessing the other actions of the parties.

S.M.M.

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<sup>[1]</sup> That’s not necessarily what the evidence suggests, at least to Qwest.