

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint
of Velocity Telephone, Inc.
Against Qwest Corporation for
Anticompetitive Conduct.

FIRST PREHEARING ORDER

A prehearing conference was held in this matter before Administrative Law Judge Richard C. Luis on August 5, 2003 at the Public Utilities Commission offices in St. Paul, Minnesota. The following persons noted their appearances at the prehearing conference:

Linda Jensen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106 appeared on behalf of the Department of Commerce (DOC).

Gregory Merz and Adam Nathe, Attorneys at Law, Gray, Plant, Mooty, Mooty & Bennett, 33 South 6th St., Suite 3400, Minneapolis, MN 55402 appeared on behalf of Velocity Telephone, Inc. (Velocity).

Joan Peterson, Attorney at Law, 200 S. 5th St., Room 395, Minneapolis, MN 55402 appeared on behalf of Qwest Corporation (Qwest).

John Lindell, Utility Analyst, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147 appeared on behalf of the staff of the Minnesota Public Utilities Commission (Commission).

PARTIES

1. The parties named in the Commission's Notice and Order for Hearing are Velocity and Qwest.

2. The DOC was not named in the Commission's Notice and Order for Hearing, but has statutory authority to intervene as of right in matters pending before the Commission. The DOC entered an appearance at the hearing. The DOC is ADMITTED as a full party in this matter.

3. The final date for petitions to intervene is August 20, 2003.

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

SCHEDULE

5. The following schedule is adopted:
 - Draft Protective Order to ALJ --August 15, 2003.
 - Deadline for Intervention -- August 20, 2003.
 - Deadline for Direct Testimony -- August 22, 2003.
 - Deadline for Rebuttal Testimony – September 15, 2003.
 - Deadline for Surrebuttal Testimony -- October 3, 2003.
 - Discovery Complete – October 7, 2003.
 - Hearing Begins – October 13, 2003.

6. Dates may be adjusted by the ALJ upon motion duly made.

7. Any motions should be filed as soon as possible. Additional prehearing conferences, either in person or by telephone, may be scheduled as needed.

FILING OF DOCUMENTS

8. Prefiled testimony and exhibits may be in any reasonable format that is understandable; logically organized; and able to be cited by page and line number, paragraph number, or similar identifier.

9. 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, an original and one paper copy of all documents shall be delivered or mailed to the Office of Administrative Hearings. An electronic copy shall also be filed, either by email or on CD or PC-compatible diskettes. Originals of all exhibits should be retained by the party to be offered at the hearing.
- b. Following the report of the Administrative Law Judge, the original of all documents should 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 by electronic mail, with a hard copy delivered by mail. 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 Office of Administrative Hearings. Parties are free to make whatever arrangements are mutually satisfactory for the delivery of additional copies.

d. The effective date of filing shall be the date the document is mailed to the Office of Administrative Hearings or delivered to the executive secretary of the Commission, pursuant to Minn. Rule pt. 1400.5100, subp. 9 and 7829.0400, subp. 1.

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

10. 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

11. 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. They should not be filed with the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within ten calendar days from 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.

12. In the event the information cannot be supplied within the ten calendar 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 the two shall work out a schedule of compliance that is mutually agreeable. 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 the affected parties.

13. Further discovery may be had in accordance with Minn. Rule pt. 1400.6700-1400.6900 to the extent not inconsistent with the discovery provisions set forth in this Order.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

14. Prefiled direct testimony shall not be bound to the record, but shall be received as an exhibit. 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 good cause shown, all substantive revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties by email no later than three days prior to commencement of the evidentiary hearing.

15. 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.

16. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearing shall be Velocity, Qwest, and DOC.

EXAMINATION OF WITNESSES

17. Witnesses shall be allowed 10 minutes to summarize and update their prefiled testimony. Additional time may be allowed if necessary to respond to new issues raised by other parties if no response was previously allowed.

18. 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.

19. 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 objections 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 further foundation for the testimony.

Dated this 8th day of August 2003.

/s/ Richard C. Luis
RICHARD C. LUIS
Administrative Law Judge

Reported: Janet Shaddix Elling, Shaddix and Associates, Transcript Prepared.