

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**

In the Matter of a Complaint by the  
Minnesota Telecom Alliance Against  
Qwest Communications, Inc. Regarding  
Traffic Terminating from Qwest  
Communications, Inc. Tandem Switches

**FIRST PREHEARING ORDER**

A prehearing conference was held August 10, 2004, in the Commission's small hearing room. Ginny Zeller, Assistant Attorney General, 1400 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2131, appeared on behalf of the Department of Commerce. Richard J. Johnson, Moss & Barnett, 4800 Wells Fargo Center, 90 South Seventh St, Minneapolis, MN 55402-4129, appeared on behalf of the Minnesota Telecom Alliance. Eric F. Swanson, Winthrop & Weinstine, P.A., 225 South Sixth St, Suite 3500, Minneapolis, MN 55402-4629, and Jason D. Topp, Qwest Corporation - Law Department, 200 South 5th Street, Room 2200, Minneapolis, MN 55402, appeared on behalf of Qwest Communications, Inc.

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

**ORDER**

**PARTIES**

1. The parties to this matter as named in the Commission's Order Requiring Additional Filing, Varying Time Period and Notice and Order for Hearing of July 29, 2004, are Minnesota Telecom Alliance ("MTA"), Qwest Corporation ("Qwest"), and the Minnesota Department of Commerce ("Department").

2. At the prehearing conference, the Petition of the Wireless Consortium to be admitted as a non-party participant was **GRANTED**. As such, the Wireless Consortium shall remain on the service list and be served with all filed documents and shall be allowed to provide argument to the Administrative Law Judge and the Commission, but it shall not participate in discovery or otherwise have the rights of a party to this proceeding.

3. The final date for filing Petitions to Intervene as a party is August 31, 2004. Any persons petitioning to intervene after that date may be restricted as to the scope of their participation.

4. Any person who desires to remain on the service list as a non-party participant must file a notice of appearance by August 31, 2004.

### **SCHEDULE**

5. The following schedule is adopted:

Stipulation of Facts	September 23, 2004
Second Prehearing Conference	September 24, 2004

6. The second prehearing conference will be held on September 24, 2004, at 9:30 a.m. in the Small Hearing Room of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101. The prehearing conference will address the schedule for the remainder of this proceeding.

### **PROCEDURE**

7. The Rules of the Office of Administrative Hearings govern the conduct of the hearings and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

### **FILING OF DOCUMENTS**

8. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being 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, the original document and one copy shall be delivered or mailed to:

Administrative Law Judge Steve Mihalchick  
Office of Administrative Hearings  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

10. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission.

11. Copies of all documents shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy shall also be sent by email to persons whose email address is provided on the service list. The list will be revised as necessary by the Office of Administrative Hearings. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.

12. 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 Office of Administrative Hearings or delivered to the Executive Secretary of the Commission. Filings to the Administrative Law Judge may be accomplished by email Steve.Mihalchick@state.mn.us or facsimile transmission, followed by a hard copy.

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

14. 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**

15. 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. No such request shall be provided to the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within eight business 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 5:00 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.

16. In the event the information cannot be supplied within the eight 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. Notice of such a motion should be made by email if possible and may be made be heard by telephone conference among the Administrative Law Judge and affected parties.

17. Parties asked to provide "Confidential Information" may require the requesting party to comply with the terms of the Protective Agreement and Order in this matter.

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

## **PREFILED TESTIMONY AND ORDER OF TESTIMONY**

19. Prefiled testimony shall be marked and 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 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 before the evidentiary hearing starts.

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.

21. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: MTA, Qwest, Department, intervenors, if any, in order of intervention.

### **EXAMINATION OF WITNESSES**

22. Witnesses shall be allowed ten 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.

23. 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.

24. 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 that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

This Order is effective immediately and may be modified by the Administrative Law Judge for cause.

Dated: August 10, 2004

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge