

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayner	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of the Complaint of the
Minnesota Department of Commerce Against
Qwest Corporation Regarding Unfiled
Agreements

ISSUE DATE: March 12, 2002

DOCKET NO. P-421/C-02-197

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On February 14, 2002, the Minnesota Department of Commerce (DOC) filed a Complaint against Qwest claiming Qwest had violated state and federal law by not submitting for Commission approval numerous agreements with Competitive Local Exchange Carriers (CLECs). Among other things, the Complaint requested an expedited hearing and temporary relief, pursuant to Minn. Stat. § 237.462.

On March 1, 2002 Qwest filed its Answer to the Complaint of the DOC. As part of its answer, Qwest joined the DOC in its request for an expedited proceeding in this case.

On March 1, 2002, Qwest filed its Opposition to Temporary Relief.

On March 1, 2002, Qwest also filed its Conditional Application for Approval of certain negotiated agreement provisions between Qwest and Eschelon Telecom, Inc., Covad Communications Company, Small CLECs, McLeod USA, US Link, InfoTel and Advanced Telecommunications, Inc.

Pursuant to Minn. Stat. § 237.462, Subd. 7, when there is a request for temporary relief, the Commission has 20 days from the filing of the complaint to issue a decision on such a request. March 6, 2002, is the twentieth day from the date of filing.

Further, pursuant to Minn. Stat. § 237.462, Subd. 6 (f), when there has been a request for an expedited hearing, the Commission has 15 days from the receiving an answer to determine whether an expedited hearing is warranted. March 16, 2002 is the fifteenth day from the filing of Qwest's answer.

These matters came before the Commission on March 5, 2002.

FINDINGS AND CONCLUSIONS

I. Background

A. Summary of the Complaint

The complaint alleges, among other things, that Qwest has entered into numerous¹ secret agreements with Competitive Local Exchange Carriers (CLECs) to provide interconnection, access to network elements, resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation and collocation to the CLEC. Further, the complaint alleges that Qwest has not submitted these agreements for Commission approval, as required by statute.² As a result, the terms of these agreements are unknown to CLECs not a party to these agreements and are not available for adoption by other CLECs, as required.³

The complaint requests expedited proceedings, temporary relief and penalties.

II. Jurisdiction

The Commission has jurisdiction over this complaint pursuant to 47 U.S.C. § § 252(e) and 251 (c)(2), (authority of state commissions to enforce interconnection agreements, and duty of incumbent carriers to interconnect with CLECs, respectively) and Minn. Stat. § § 237.081(Commission investigations) and 237.462 (competitive enforcement).

III. The Request for Temporary Relief and Expedited Hearings

The DOC requested that the Commission order Qwest to immediately make any and all of the specified terms or conditions of interconnection or service public, and also make the specified terms and conditions immediately available to any other CLEC that wishes to adopt these provisions.

Both the DOC and Qwest requested expedited proceedings.

¹ Approximately thirty-three provisions in eleven agreements.

² 47 U.S.C. § 252(e).

³ 47 U.S.C. § 252(i).

IV. Parties Positions on the Issue of Temporary Relief

A. DOC

In its Complaint the DOC argued that temporary relief was necessary to protect the public's interest in fair and reasonable competition. It argued that Qwest was offering terms and conditions of interconnection in a discriminatory manner. If Qwest were not required to make the specified terms or conditions of interconnection immediately available to all CLECs, Qwest would be continuing to limit competition and to provide access to its network and its services in a discriminatory manner.

At the hearing before the Commission, the DOC did indicate that a Commission decision to resolve the Complaint under expedited time lines would significantly mitigate the need for temporary relief.

B. Qwest

Qwest argued that the relief the DOC is requesting is not temporary relief but is, in fact, immediate, complete and permanent relief. Qwest further argued that it has submitted the terms of the agreements to the Commission without a request for confidential treatment and in doing so has made the terms public.

Qwest also argued that the DOC has not met the statutory requirements⁴ for such relief. The DOC has made assertions but has not adequately shown that there has been any effect on competition from the non-filing of the agreements. Further, Qwest argued, the DOC is unlikely to succeed on the merits because the terms at issue were not properly the subject of interconnection agreements.

V. Commission Action

The Commission recognizes that there are contested issues of material fact arising from this complaint that the Commission cannot satisfactorily resolve on the basis of the parties' filings. For this reason the Commission will refer this matter to the Office of Administrative Hearings (OAH) for contested case proceedings. The Commission will request that the OAH hear this matter on an expedited time schedule following the guidelines for expedited hearings set forth in Minn. Stat. § 237.462, Subd. 6. Hearing this matter on an expedited schedule will address the concerns of both parties that this issue be quickly resolved.

⁴ See Minn. Stat. 237.462, Subd. 7(c) requiring: (1) the party seeking relief will likely succeed on the merits, (2) the order is necessary to protect the public's interest in fair and reasonable competition, and (3) the relief sought is technically feasible.

Further, the Commission recognizes that to make a determination on whether temporary relief should be granted, the merits of the case would necessarily need to be addressed. Since the merits of the case will be addressed on an expedited basis, and the complainant has indicated its agreement, the Commission will not award temporary relief at this time.

VI. Issues to be Addressed

The scope of the issues to be addressed in the contested case hearing are as follows:

- whether the agreements or any portion thereof needed to be filed with the Commission for review;⁵
- if the agreements needed to be filed whether they were filed under other settings;
- whether there were any exculpatory reasons why they were or were not filed;
- recommendations as to whether disciplinary action/penalties are appropriate.

VII. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

⁵ The Commission clarified that this included terminated agreements.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

Discovery and Informal Disposition

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)282-2151; or Karen Hammel, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-1852.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are Qwest and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Wednesday, March 20, 2002, at 9:30 a.m. in Conference Room B of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

The Commission requests that this matter be heard on an expedited time schedule following the guidelines in Minn. Stat. 237.462, Subd. 6 for expedited hearings.

VIII. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

IX. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.
2. A prehearing conference shall be held on Wednesday March 20, 2002, at 9:30 a.m. in Conference Room B, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Complaint of the
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Against Qwest Corporation Regarding
Unfiled Agreements

MPUC Docket No. P-421/C-02-197

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Allan W. Klein, Office of Administrative Hearings, Suite 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7609.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____