

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
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Gregory Scott

Chair
Commissioner
Commissioner
Commissioner

In the Matter of Qwest Corporation's
Alternative Form of Regulation (AFOR) Plan

ISSUE DATE: September 4, 2003

DOCKET NO. P-421/AR-97-1544

ORDER DENYING EXTENSION AND
REQUIRING FILING

PROCEDURAL HISTORY

On January 1, 1999, U S WEST Communications, Inc. (U S WEST), began operating under an Alternative Form of Regulation (AFOR) plan approved by the Commission under Minnesota Statutes §§ 237.76 through 237.772.¹ Under its terms, this plan (the Current Plan) is scheduled to expire on December 31, 2003.

On June 28, 2000, Qwest Corporation (Qwest) merged with U S WEST and assumed its obligations under the AFOR.² According to Qwest, this merger agreement extended the AFOR's service quality provisions to December 31, 2004.

On June 30, 2003, Qwest asked the Commission to extend the Current Plan for an additional year.

On July 22, 2003, the Commission received comments from the Minnesota Department of Commerce (the Department), the Office of the Attorney General's Residential and Small Business Utilities Division (OAG-RUD) and the Suburban Rate Authority (SRA).

On August 1, 2003, the Commission received reply comments from Qwest and SRA.

¹ See *In the Matter of the Petition of U S WEST Communications, Inc. for Approval of its*

Alternative Form of Regulation Plan, Modified Alternative Form of Regulation Plan for the State of Minnesota (January 11, 1999).

² *In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI, International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc., and U S WEST Communications, Inc.*, Docket No. P-3009, 2052, 5096, 421, 3017/PA-99-1192 ORDER ACCEPTING SETTLEMENT AGREEMENTS AND APPROVING MERGER SUBJECT TO CONDITIONS

On August 5, 2003, the Commission received comments from Mr. Robert Tyson on behalf of people living near Tofte, Minnesota, petitioning Qwest to install landline service.³

The matter came before the Commission on August 19, 2003.

FINDINGS AND CONCLUSIONS

I. Background

Minnesota Statutes permit a telephone company to replace some regulatory obligations with obligations of its own choosing, provided that the new regulatory plan meets certain statutory requirements and is approved by the Commission. AFOR plans “provide, where appropriate, a regulatory environment with greater flexibility than is available under traditional rate-of-return regulation as reflected in other provisions of this chapter.” Minn. Stat. § 237.76.

While an AFOR Plan has a limited duration, Minnesota Statutes § 237.766 provides for revising and renewing such plans:

An alternative regulation plan approved by the commission under section 237.764 must remain in force as approved for the term specified in the plan, which must be for no less than three years. Within six months prior to the termination of the plan, the plan must be reviewed by the commission and, with the consent of the company, revised or renewed....

In addition, Minnesota Statutes § 237.764, subdivision 1(e) provides for extending the term of an existing AFOR plan:

....The commission shall issue its decision on a plan within six months after receiving the petition to approve the plan unless the commission and the petitioning company agree to an extension of the time for commission action.

II. Qwest’s Petition

Qwest states that the Current Plan no longer fits the competitive environment in Minnesota, and Qwest is prepared to file a new AFOR plan for the Commission’s consideration. Nevertheless, Qwest proposes to extend the term of its current plan for an additional year.

Two factors prompt Qwest’s proposal. First, the quality of Qwest’s retail services is governed by both the Current Plan and Qwest’s merger agreement. While the Current Plan is due to expire in 2003, the merger agreement’s service quality standards extend through 2004. Qwest sees administrative advantages to coordinating the end dates of all these agreements.

³ See *In the Matter of the Request for Service in Qwest’s Tofte Exchange*, Docket No. P-421/CP-00-686.

Second, Qwest argues that telecommunications regulation is in a state of flux. Qwest cites a number of pending matters to support its view: Its approval to enter the long-distance market in its service area in Minnesota, the triennial review of federal telecommunications regulation,⁴ and the Commission's docket for reforming access charges. Qwest argues that waiting an additional year before undertaking a reform of its AFOR Plan would permit parties to have a better sense of the new regulatory foundations upon which an AFOR would be built. Postponing the reformulation of Qwest's AFOR Plan would also relieve the administrative burden that all parties are experiencing while trying to participate in so many complex dockets simultaneously.

III. Comments

A. The Department

The Department supports Qwest's proposal. The Department concludes that the Current Plan provides for such extensions. The Department also shares Qwest's view that postponing further consideration of Qwest's AFOR Plan would give all parties time to participate in other matters affecting telecommunications. Those other matters – including state and federal dockets, and the impending legislative session – may provide more perspective for crafting a new AFOR Plan.

B. OAG-RUD

The OAG-RUD argues that Qwest's proposal would prolong the Current Plan's benefits to Qwest, but would not extend equivalent benefits to the public. For example, Qwest's proposal would extend the period during which Qwest is protected from a rate case, but would not offer the public any new commitments regarding Qwest's rates, service or infrastructure. According to OAG-RUD, other companies have offered more ratepayer benefits when seeking extensions of their AFOR plans.⁵ While the OAG-RUD might be willing to consider a more balanced extension proposal, the OAG-RUD recommends rejecting Qwest's current offer.

Additionally, the OAG-RUD is not persuaded that the demands posed by other current dockets are so unusual, or so transitory, that a one-year delay would provide significant administrative benefits.

C. Suburban Rate Authority

SRA argues that Qwest's proposal is inconsistent with its duties under statute and the terms of the Current Plan, which require Qwest to propose a new plan six months before the Current Plan terminates. While Qwest acknowledges that it is prepared to file a new plan, its current proposal would relieve Qwest of the legal obligation to disclose the terms of its new plan for another year.

⁴ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 03-36 Report and Order and Order on Remand and Further Notice of Proposed Rulemaking (rel. August 21, 2003).

⁵ See, for example, *In the Matter of a Petition by Frontier Communications of Minnesota, Inc., Requesting Adoption and Renewal of an Alternative Regulation Plan*, Docket No. P-405/AR-00-394 ORDER MODIFYING ALTERNATIVE REGULATION PLAN (May 25, 2001); *In the Matter of a Petition by Sprint Minnesota, Inc. Requesting Adoption and Renewal of an Alternative Regulation Plan*, Docket No. P-430/AR-02-290 ORDER APPROVING CUSTOMER NOTICES, APPROVING PUBLIC MEETING SCHEDULE, AND EXTENDING CURRENT ALTERNATIVE REGULATION PLAN (November 15, 2002).

In addition to being illegal, SRA argues, the proposed extension would harm ratepayers' interests. The fact that Qwest proposed the extension suggests that the Current Plan is operating to Qwest's advantage. Every day that Qwest delays making its new proposal available for review is another day that the Current Plan will remain in place. And if Qwest is permitted to extend its Current Plan this time, it may seek to do so again, indefinitely depriving ratepayers of their rights to participate in the AFOR process and the benefits of a revised plan.

SRA is concerned about Qwest's infrastructure investments, especially regarding digital subscriber line (DSL) service. SRA argues that Qwest has been slow to make DSL service available. SRA sought information from Qwest related to this topic, but Qwest denied the SRA's request on the grounds that the information was competitively sensitive. SRA disputes this conclusion, and argues that a full-scale AFOR proceeding would provide parties with greater access to information such as the data withheld by Qwest. See Minn. Stat. § 237.764, subd. 1(d).

SRA joins the OAG-RUD in questioning whether Qwest's proposal would actually result in conserving administrative resources. As Qwest acknowledges, circumstances have changed since the Current Plan was adopted. If Qwest wants to continue being regulated under an AFOR plan, SRA argues, then the Commission will need to do the work of analyzing the plan under current circumstances – including conducting all necessary proceedings – whether Qwest seeks to extend the Current Plan or files a whole new plan.

SRA is skeptical about Qwest's claim that the coming year will impose abnormally high demands on the administrative resources of the regulators and the parties. Assuming Qwest were right, however, then the need for Qwest to file its new AFOR plan promptly is all the greater; there is no time to waste.

D. Tofte petitioners

In opposing a Commission order to install landline service to certain households near Tofte, Minnesota, Qwest argued that the Current Plan limits Qwest's opportunity to increase rates to recover new construction costs. Consequently Mr. Robert Tyson, on behalf of the petitioners in the Tofte case, asks the Commission not to extend the Current Plan.

E. Qwest

Qwest argues that the statutory language providing for a plan to be "revised or renewed" contemplates the kind of extension that Qwest is seeking. Language in the Current Plan also provides for extensions. Consequently, Qwest denies that its proposal is illegal.

In addition, Qwest argues that the Current Plan provides ratepayers with rate stability, high service quality, and investments in infrastructure, and that extending the plan would extend these benefits.

IV. Commission Action

Having considered the arguments of the parties, the Commission concludes that Minnesota Statutes do not contemplate granting an extension to AFOR plans in the manner proposed by Qwest. Consequently, Qwest's request will be denied.

Statute governs the procedure for acting on AFOR petitions. Minnesota Statutes § 237.764 requires the petitioning company to explain how ratepayers would benefit from its proposal. It requires the petitioner to notify its customers of the proposal, and of the public hearings, if any, that the Commission has scheduled. It requires the Commission to conduct an expedited proceeding to consider the proposal, and to permit parties to pursue discovery of relevant information. Under these circumstances, it provides for the Commission to grant extensions to an AFOR plan while a new plan is under consideration. And Minnesota Statutes § 237.764 specifies that any AFOR plan approved by the Commission must remain in effect for at least three years.

As Qwest correctly observes, a revised or renewed plan need not fulfill all the same requirements as a new plan. Minnesota Statutes § 237.766 lists the exceptions: A revised or renewed plan need not contain a justification of earnings levels, nor a prohibition on rate increases during the plan's first three years. But there is no exception to the requirement that a plan last at least three years.

Here Qwest seeks to renew its Current Plan for a one-year period. Qwest's proposal is inconsistent with the statutory requirement that AFOR plans have at least a three-year term. And, because Qwest has not offered a viable AFOR proposal for the Commission's consideration, the statutory provisions for granting extensions during consideration of a new AFOR plan do not apply.

The most clearly applicable statutory provision is § 237.766: "Within six months prior to the termination of the plan, the plan must be reviewed by the commission and, with the consent of the company, revised or renewed...." We are now within six months of the Current Plan's expiration date of December 31, 2003. Qwest has stated its intention to continue being regulated under an AFOR plan. Consistent with that intention, the Commission will direct Qwest to file a revised or renewed AFOR plan in a manner that complies with the statutory requirements.

ORDER

1. Qwest Corporation's request for a one-year extension to the Current Plan is denied.
2. Qwest shall file a revised or renewed AFOR plan consistent with statute.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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