

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

XO Communications-Illinois, Inc. :
-vs- :
NorthpointNorthPoint Communications, Inc. : 01-0296
:
Petition for Emergency Relief. :

HEARING EXAMINER'S PROPOSED ORDER

By the Commission

On March 29, 2001, XO Illinois, Inc. and XO Communications Inc. (collectively "XO" or "Complainant"), a reseller of DSL services, filed a Petition for Emergency Relief ("Complaint") with this Commission which sought to enjoin NorthpointNorthPoint Communications, Inc. ("NorthpointNorthPoint" or "Respondent") for a reasonable time from terminating its xDSL services to XO and other customers until such time as XO was able to obtain alternative source of DSL access to service its customers. There were no intervenors. Pursuant to notice, hearings were held on April 6, 2001 and May 15, 2001 before a duly authorized Hearing Examiner in the Commission's Office in Chicago, Illinois.

At the time that the Complaint was filed, NorthpointNorthPoint had filed for protection under bankruptcy laws and ~~had already~~ was preparing to terminated service to its customers without providing 30 days notice to its customers or the Commission pursuant to Section 13-406 of the Public Utilities Act ("Act"). By April 6, 2001, the date of the initial hearing, NorthpointNorthPoint had in fact terminated service to its customers and asserted it no longer had the manpower or resources necessary to reinstate service to its customers even if ordered to do so. This service termination caused NorthPointNorthPoint's many Internet Service Provider ("ISP") customers to be unable to service the customers to whom they resold DSL service. Furthermore, these ISPs were initially unable to obtain an alternative source for their service needs because NorthPoint had not disclosed circuit identification numbers necessary for that purpose.

At the hearing on April 6, 2001, NorthpointNorthPoint agreed to work with XO and other ISPs to facilitate the transition of its customers to other DSL providers. Subsequently, on May 8, 2001, all matters in controversy having been resolved, the parties filed a Joint Motion for Entry of Order of Dismissal on stipulated Terms and Conditions ("Motion").

~~This Motion requests that the Commission require that any other carrier going out of business in the future require provide 30 days written notice to affected customers and carriers prior to termination of service. Furthermore, the Motion requests that the Commission implement specific rules which would, in the future, facilitate the transfer and continuation of service by other carriers when, and if, a wholesale DSL carrier goes out of business.~~ In the Stipulated Motion, the parties respectfully requested that the Commission provide that any carrier going out of business or withdrawing from service must:

1. Provide all affected customers and carriers not less than 30 days' advance notice in writing of the proposed termination of service, except insofar as such notice is not legally permissible, in which event the exiting carrier shall confer with the Commission;
2. During the period between such notice and the actual termination of service, fully cooperate with all affected customers and with any carrier that seeks to fulfill a customer's request for continuation of such service ("the succeeding carrier") by providing a blanket letter of authorization/letter of agency (and any other necessary documentation) to the succeeding carrier in order to facilitate the transfer of circuits as well as access to all necessary facilities and equipment, and
 1. During the period between such notice and the actual termination of service, expeditiously provide all circuit identification and any other information necessary for transferring the customer's service to the succeeding carrier.

Additionally, the parties requested that the Commission indicate that it expects any other carrier involved in the provision of service to customers of the exiting carrier to:

1. Cooperate in sharing information and expeditiously creating procedures adequate for transfer of the customer from the exiting carrier to the succeeding carrier (either CLEC to ILEC or CLEC to CLEC) with the least possible disruption of service to the customer, and
2. Effect a direct one-step ("lift and lay") transfer of service process that prevents end user loops (or other facilities) previously utilized by the exiting carrier from returning to the "pool" of unused facilities and equipment and ensures that they will instead be available for immediate use by the succeeding carrier.

At a hearing held on May 15, 2001, the Motion was taken under advisement and the docket was marked heard and taken.

Commission Analysis and Conclusion

~~XO's and Northpoint's Joint Motion to Dismiss asks the Commission to engage in ad hoc rulemaking without providing notice and hearing to those entities that would be impacted by the proposed Order. Parties to a complaint proceeding before the Commission have no standing to compel~~ Although the Commission cannot to enter an order binding third parties who are not a party of a to this proceeding to a course of future conduct, the Commission takes this opportunity to reiterate that it expects all carriers to abide by all applicable rules and regulations, and expects all carriers to cooperate in the conversion of their respective customers so that the conversion is as seamless to the customer as possible. The Commission notes that the terms and conditions contained in the Parties' Stipulated Motion are reasonable.

~~Moreover,~~ Carriers have a statutory obligation to provide their customers as well as the Commission with notice prior to discontinuing or abandoning service, Section 13-406 of the Public Utilities Act ("Act") provides:

No telecommunication carrier offering or providing noncompetitive telecommunications service pursuant to a valid Certificate of Service Authority or certificate of public convenience and necessity shall discontinue or abandon such service once initiated until and unless it shall demonstrate, and the Commission finds, after notice and hearing, that such discontinuance or abandonment will not deprive customers of any necessary or essential telecommunications service or access thereto and is not otherwise contrary to the public interest. No telecommunications carrier offering or providing competitive telecommunications service shall discontinue or abandon such service once initiated except upon 30 days notice to the Commission and affected customers. The Commission may, upon its own motion or upon complaint, investigate the proposed discontinuance or abandonment of a competitive telecommunications service and may, after notice and hearing, prohibit such proposed discontinuance or abandonment if the Commission finds that it would be contrary to the public interest.

Therefore, telecommunications carriers are already required by statute to provide 30 days advance notice to the Commission and customers before discontinuing service. ~~Although Northpoint~~ NorthPoint went out of business without providing the required notice. Although it is too late in the case of NorthPoint, the Commission will investigate all possible remedies in preparation for future cases, including whether it can bar principals of any carrier who knowingly fails to provide the requisite statutory notice from future certification cases. ~~lacks the ability to require a defunct and bankrupt business to~~

~~continue to provide service to its customers when the matter is brought to its attention after the business has shut its doors.~~

The Commission finds that the conditions and stipulations proposed by the parties in this Docket not already required by statute have now been performed by the respondent in this case and cannot be made binding on other entities not a part of this proceeding, absent a rulemaking proceeding. The issues raised by this Complaint are of the utmost importance in emergency situations such as in this case, as well as in the day-to-day business operations of carriers for both voice and data services. The resolution of all issues surrounding CLEC-to-CLEC and CLEC-to-ILEC conversions is imperative to the efficient functioning of the industry. Therefore, the Commission instructs Staff to initiate a rulemaking proceeding.

FINDINGS AND ORDERING PARAGRAPH

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) ~~XO Communications Inc.~~ is a reseller of DSL services. ~~Northpoint Communications, Inc.~~ NorthPoint was a wholesale provider of xDSL services to XO and other customers;
- (2) the Commission has jurisdiction over the parties and subject matter herein;
- (3) ~~XO Communications Inc.~~ filed a Complaint with this Commission which sought to enjoin ~~Northpoint~~ NorthPoint ~~Communications, Inc.~~ from terminating its xDSL services to XO and other customers;
- (4) it appears that all matters in controversy between the parties have been resolved;
- (5) the parties have jointly moved for the dismissal of the Petition;
- (6) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (7) the Complaint may properly be dismissed.
- (8) Staff is instructed to initiate a rulemaking proceeding to address CLEC-to-CLEC conversions.

IT IS THEREFORE ORDERED that the Complaint filed on March 29, 2001, by XO Illinois, Inc. and XO Communications Inc. against ~~Northpoint~~ NorthPoint Communications, Inc. be and the same is dismissed with prejudice.

IT IS FURTHER ORDERED that pursuant to Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

ORDER DATED:
BRIEFS ON EXCEPTIONS:
REPLIES ON EXCEPTIONS

May 22, 2001
June 6, 2001
June 13, 2001

Hearing Examiner
Terrance Hilliard