

P-483/NA-88-162 TO CEASE AND DESIST OPERATIONS IN MINNESOTA AND DENYING
CERTIFICATE OF AUTHORITY

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Request by Telecom Xpress
for a Certificate of Authority to Sell
Telecommunications Service Within the State

ISSUE DATE: December 14, 1988

DOCKET NO. P-483/NA-88-162

ORDER TO CEASE AND DESIST
OPERATIONS IN MINNESOTA AND
DENYING CERTIFICATE OF
AUTHORITY

PROCEDURAL HISTORY

On March 11, 1988, Telecom Xpress (TXI or the Company) filed a request with the Minnesota Public Utilities Commission (Commission) asking for a certificate of authority to sell telecommunications service within Minnesota.

On October 27, 1988, the Minnesota Department of Public Service (Department or DPS) filed its report of investigation and recommendation in this matter. The DPS recommended that the Commission disapprove the Company's request and order the Company to cease and desist operations in Minnesota.

TXI replied to the Departments comments on November 3 and 9, 1988.

The Department responded and continued to recommend Commission disapproval of the Company's request for a certificate of authority.

FINDINGS AND CONCLUSIONS

The Commission must decide whether TXI should be granted a certificate of authority to resell telecommunications services within Minnesota.

TXI has been selling interexchange services in Minnesota since January 1, 1988 and estimates that it has five or six customers in Minnesota. TXI has no facilities of its own and resells the telecommunications services of US Sprint for calls originating and terminating in Minnesota. The Company sells three telecommunications services: a conventional direct dial service, a Travel Card Service, and Xpress WATS service. The rates charged by TXI are comparable to those charged by other carriers. TXI markets its services through a multi level marketing program.

The Commission is guided by Minn. Stat. § 237.16, subd. 4 (1986) which provides that no company shall operate any line, plant or system without first obtaining from the Commission a determination that present or future public convenience and necessity require or will require such operation.

To help in analyzing public convenience and necessity, the Commission has established fourteen filing requirements for applicants seeking authority to resell long distance telephone service. In the Matter of an Investigation by the Minnesota Public Utilities Commission into the Resale and Sharing of Intrastate Wide Area Telecommunications Service., Docket No. P-421/CI-82-619, Order Establishing Reseller Application Requirements (July 13, 1983). Applicants are required to submit a financial statement including a gross annual revenue statement and an annual report.

The Commission finds that the Company filed most of the information required by the July 13, 1983 Order in its application of March 11, 1988. However, the Company did not file financial statements until September 28, 1988 following repeated written and oral requests from the DPS. These financial statements covered only the month of March, 1988. The Commission finds that it cannot base a finding of public convenience and necessity on this minimal showing of financial stability. Based on the record before it, the Commission finds that the quality and reliability of the services provided by TXI may be jeopardized by the Company's financial condition. The Commission concludes that the Company has not met the public convenience and necessity standard of Minn. Stat. § 237.16, subd. 4 (1986) and will deny TXI's request for a certificate of authority.

Finally, the Commission notes that TXI has been selling interexchange services in Minnesota since January 1, 1988. The Commission finds that the Company is not authorized to do so and is violating Minn. Stat. § 237.16, subd. 4 (1986). The Commission will order the Company to immediately cease and desist operations in Minnesota.

ORDER

1. The request of Telecom Xpress, Inc. for a certificate of authority to sell telecommunications services with Minnesota is hereby denied.
2. Telecom Xpress, Inc. is ordered to immediately cease and desist intrastate operations in Minnesota.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

(S E A L)