P-427/PA-91-931 ORDER APPROVING TRANSFER OF STOCK AND REORGANIZATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of Sherburne County Rural Telephone Company's Request Regarding the Reorganization and Transfer of All Its Shares of Common Stock to Sherburne Tele Systems, Inc.	ISSUE DATE: October 16, 1992 DOCKET NO. P-427/PA-91-931 ORDER APPROVING TRANSFER OF STOCK AND REORGANIZATION

PROCEDURAL HISTORY

On November 25, 1991, Sherburne County Rural Telephone Company (SCRTC) filed a petition seeking Commission approval of a transfer of stock and corporate reorganization.

On July 8, 1992, the Department of Public Service (the Department) filed its report and recommendation. The Department recommended that the Commission approve the reorganization.

The matter came before the Commission on September 18, 1992.

FINDINGS AND CONCLUSIONS

I. Factual Background

SCRTC is a Minnesota independent local exchange company (ILEC) which provides local exchange telephone service to approximately 6,600 customers in the exchanges of Becker, Big Lake, Glendorado and Zimmerman.

On July 23, 1991, SCRTC's shareholders voted to transfer all of the outstanding shares of SCRTC to Sherburne Tele Systems (STS), a Minnesota corporation, in exchange for all outstanding shares of common and preferred stock of STS. After the transfer, SCRTC shareholders would own 100% of the outstanding shares of STS, in the same proportion as they had held shares of SCRTC stock. SCRTC would continue to operate as an ILEC, but would become one of six affiliates of STS. As part of the reorganization plan, two new affiliates would be created: Sherburne Fiber-Com, Inc., (SFC), which would lease fiber transport services, and Sherburne Long Distance, Inc. (SLD), which would provide intrastate intraexchange and interexchange telecommunications service, if granted a certificate of authority.

On November 25, 1991, SCRTC filed a petition with the Commission requesting approval of the proposed reorganization under Minn. Stat. § 237.23. SCRTC stated that there would be no change in the rates or local service of SCRTC subscribers as a result of the reorganization. SCRTC noted that it had recently applied for a certificate of authority for SLD under a separate docket. SCRTC also noted that SFC would be a carrier's carrier and would not lease transport facilities to members of the public. SCRTC maintained that an entity such as SFC, which serves solely as a carrier's carrier, does not require authorization or certification from either the Federal Communications Commission or the Commission.

II. Positions of the Parties

SCRTC

In its petition, SCRTC gave three main reasons that the proposed reorganization would be in the best interest of SCRTC ratepayers. First, the creation of separate corporations for certain competitive services would provide added safeguards against cross-subsidization. SCRTC stated that it would use established cost separation, allocation, and affiliated transaction accounting methodologies to allocate costs among SCRTC and its affiliates. SCRTC would comply with the affiliated transactions provisions of Minn. Stat. § 237.65. Any consulting, administrative or management services provided SCRTC by STS would be done pursuant to a written agreement.

SCRTC next argued that the reorganization would be in ratepayers' interests because SLD, an affiliate which would be created as a result of the restructuring, would provide economical alternatives to the DS-1 private line service and other services currently available. This argument became irrelevant when SCRTC replaced its DS-1 private line tariff with a proposed Self Healing Network Service tariff.

Third, SCRTC argued that the reorganization would benefit its ratepayers because the new organizational structure would provide SCRTC and its affiliates with increased operating efficiencies, with no change in rates or local service.

At the September 18, 1992 meeting, a representative of SCRTC emphasized that reorganization would benefit SCRTC ratepayers by allowing the local telephone service to be separate from the more risky ventures undertaken by SCRTC affiliates. The restructuring would insulate SCRTC from a great part of the overall telecommunications risk; this would result in lower borrowing cost for SCRTC.

SCRTC also addressed the issue of the affiliate SFC, which would be created as part of the proposed reorganization. SCRTC maintained that SFC would not require either federal or state certification, since SFC would act only as a carrier's carrier, leasing transport facilities not to members of the public but to other carriers.

The Department

The Department stated that the proposed reorganization would both help and hinder the monitoring of possible cross-subsidization. Establishing separate entities for different corporate functions would help keep accounting entries separate and would encourage greater documentation of transactions. On the other hand, fewer transactions would be included in annual reports to the Commission. Monitoring cross-subsidization by determining the proper market price for the services of nonregulated affiliates is difficult. The Department is sufficiently concerned about these issues to have begun investigations of affiliated interest transactions in approximately twelve other dockets. After considering the effect of the reorganization on the issue of cross-subsidization, the Department did not feel that the possible drawbacks outweighed the possible benefits.

The Department stated that SCRTC's proposal for a certificate of authority for SLD is addressed in the certification docket, No. P-3075/NA-91-898. Since the services which would be provided by SLD were cited by SCRTC as a justification for its reorganization, the Department stated that it believed SLD should be granted a limited certificate of authority to operate as a separate affiliate.

Although the Department noted that SCRTC did not provide calculations of anticipated savings from operational efficiencies, the Department did not dispute SCRTC's projected savings. While the Department noted that the separation of functions into separate entities can shield ratepayers from the riskier corporate ventures, the Department felt that this benefit falls more to shareholders than to ratepayers.

Finally, the Department noted that it has asked the Commission to initiate a generic investigation into the regulatory status of transport service providers. Because of this upcoming investigation, and because SFC has not requested exemption from certification, the Department stated that no action from the Commission was necessary regarding SFC.

III. Commission Action

The Commission finds that issues surrounding the status of SLD and SFC will not be decided as part of this proceeding. The request by SCRTC for certification of SLD is under consideration in Docket No. P-3075/NA-91-898, and will be decided under that docket. SFC has not made any request of the Commission in this or any other docket. While this entity will come about as part of the reorganization being decided in this docket, the actual reorganization issue before the Commission is the stock exchange between SCRTC and STS, not the existence of SFC as a new affiliate after the stock transfer. The Commission will therefore not decide in this docket if SFC requires a certificate of authority, or if that certificate should be granted. The Commission anticipates that this issue will be decided when a generic investigation of the regulatory status of transport service providers is initiated.

The propriety of the stock transfer between STS and SCRTC and the resultant corporate reorganization are before the Commission for determination in this docket. The Commission finds that the reorganization should be approved.

The petitioner, SCRTC, has conformed to the provisions of Minn. Stat. § 237.23, the statute which governs such stock exchanges. Ratepayers will not experience a change in either rates or services when the stock transfer is effected. SCRTC has made a showing that separate cost allocations among corporate entities can aid the monitoring of possible cross-subsidization. SCRTC's arguments regarding insulation from corporate risk and the likelihood of lower borrowing cost are persuasive. The benefits of operational efficiencies, such as savings in payroll, purchasing and check writing, are logical.

For the reasons stated, the Commission will approve the proposed reorganization of SCRTC. The Commission makes no decision regarding the regulatory status of SFC, and will take up the certification request of SLD in a separate docket.

ORDER

1. The November 25, 1991 petition for authority to exchange all shares of stock between Sherburne County Rural Telephone Company and Sherburne Tele Systems, Inc. is approved.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)