

P-3039/NA-95-743

ORDER GRANTING A CERTIFICATE OF AUTHORITY AND REQUIRING FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Minnesota Independent
Interexchange Corporation's Request For
Authority to Provide Dedicated High Capacity
Local Telecommunications Channels

ISSUE DATE: November 28, 1995

DOCKET NO. P-3039/NA-95-743

ORDER GRANTING A CERTIFICATE OF
AUTHORITY AND REQUIRING FILINGS

PROCEDURAL HISTORY

On August 1, 1995, the Minnesota Independent Interexchange Corporation (MIIC)¹ filed for authority to provide local high capacity dedicated telecommunications channels in certain areas of Minnesota.

On August 11, 1995, the Minnesota Department of Public Service (the Department) and US West Communications, Inc. (USWC) filed comments on MIIC's proposal. The parties did not object to MIIC's filing, but submitted comments or requested clarification and further filings on certain issues.

On August 21, 1995, MIIC filed reply comments.

On October 12 and 27, 1995, respectively, the Department and USWC filed supplemental comments.

On November 21, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. MIIC's Proposal

MIIC proposed to offer nonswitched transmission at operating speeds of 1.544 Mbps (DS1 service) and 45 Mbps (DS3 service) at the following locations: 1) between customer premises,

¹ MIIC is a wholly owned subsidiary of Minnesota Equal Access Network Services (MEANS), which is also the parent company of the Minnesota Independent Equal Access Corporation (MIEAC), an equal access provider in Minnesota.

2) between customer premises and interexchange carriers' points of presence (POPs), and 3) between POPs. The proposed services will be available within USWC's service areas where the Minnesota Equal Access Network Services (MEANS) now operates access points to its tandem switch in the following counties:

- ***The Seven County Metro Area:*** Anoka, Carver, Ramsey, Scott, Hennepin, Washington and Dakota.

- ***Other Counties:***

Polk	Clay	Wilkin
Wadena	Otter Tail	Steele
St. Louis	Stearns	Benton
Sherburne	Cottonwood	Jackson
Olmstead	Carlton	

According to MIIC, it will use personnel services and lease facilities from MEANS. It will also lease facilities from competitive access providers, cable companies, USWC, or if warranted, construct additional facilities.

B. The Department's Comments

The Department stated that the Commission has authority under Minn. Stat. §237.16 to grant MIIC's request. The Department noted that the Commission has granted similar authority to Metro Fiber Systems (Docket No. P-459/EM-89-80), Continental Telecommunications Corporation (Docket No. P-3123/NA-93-198), and Fibrcom (Docket No. P-3140/NA-93-781). The Department stated that it has reviewed MIIC's application and believes that MIIC has the necessary technical, managerial and financial resources to provide local private line service.

The Department stated that MIIC, like any other service provider, must contribute to the support of universal service, but clarified that the Commission has the opportunity to fully address the issue in the ongoing rulemaking in Docket No. P-999/R-95-53.

The Department also noted that while MIIC has predicted that providing redundant services to a small percentage of USWC customers will have "de minimis" impact on USWC, the Company has provided no documentation to support this conclusion.

Regarding MIIC's proposal to offer its services on individual case-based (ICB) pricing, the Department stated that MIIC's proposal was appropriate and simply recommended that the Commission order MIIC to file copies of contracts, including cost and rate information, with the Department.

C. USWC's Comments

USWC raised concerns or requested clarification regarding several aspects of the Company's proposal:

- USWC disputed MIIC's assertion that the aggregate and long term impact on USWC of this application (with the competition provided by Metro Fiber Systems, Continental Telecommunications, and Fibrcom Inc.) would be "de minimis."
- USWC noted that MIIC's statement that it intends to offer the services to "selected interexchange communications carriers and businesses" could lead to discrimination. USWC requested that in approving MIIC's proposal it should clarify that the authorization applies only to the provision of DS1 and DS3 service.
- USWC emphasized that all service providers (including MIIC) must contribute to the support of universal service but agreed that the Commission has the opportunity to fully address the issue in the ongoing rulemaking docket regarding local competition, P-999/R-95-53.
- USWC did not dispute MIIC's proposal to provide its services on an ICB basis as long as it is clear that USWC is not precluded from similarly pricing on an ICB basis.
- USWC objected that the maps initially filed by MIIC did not show USWC's exchange boundary lines and, hence, did not clearly show MIIC's intent to sell service in USWC's service territory. However, after MIIC filed revised maps, USWC no longer disputed the validity of the maps.

D. Commission Analysis and Action

The Commission considers MIIC's petition pursuant to Minn. Stat. § 237.16, subs. 10 and 1 which state in relevant part:

Subd. 10. INTERIM AUTHORITY. (a) Before adopting the rules required under subdivision 8, the commission shall grant an applicant a certificate to provide a proposed local telephone service when the commission finds that the applicant meets the conditions of subdivision 1.

Subd. 1. NEW SERVICE, CERTIFICATE OF AUTHORITY. (a)....

(b) No person shall provide telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to provide the proposed telephone services and a certificate of authority from the commission under the terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with the commission's rules, and the commission's rules.

After careful review of MIIC's proposal, the Commission concludes that the Company and its request for authority to offer dedicated, nonswitched private line and special access services in USWC service areas meet the above-quoted standards. Minn. Stat. §237.16 (1995). Meriting

separate mention are the findings that MIIC's request in this case will enhance competition, serve customer interest, and bring greater service reliability. Accordingly, the Commission will grant the requested authority.

The Commission notes that its decision in this case is consistent with previous cases in which the Commission found that allowing private line and special access competition in areas served by USWC and other local exchange carriers provide consumers the benefits of efficiency, choice and enhanced technology.

In granting this certificate of authority, the Commission makes the following clarifications:

- ***Services Authorized:*** The authority will be for MIIC to provide nonswitched transmission at operating speeds of 1.544 Mbps (DS1 service) and 45 Mbps (DS3 service) at the following locations: 1) between customer premises, 2) between customer premises and interexchange carriers' points of presence (POPs), and 3) between POPs.
- ***ICB Pricing:*** As recommended by the Department and consistent with the requirements for other providers, MIIC will be required to file copies of contracts, including cost and rate information, with the Department. As with any ICB pricing, compliance with the anti-discrimination statute, Minn. Stat. § 237.09, subd. 2 (a) (1995) still applies.
- ***Classification of the Offered Services:*** MIIC will be required to submit an identical tariff for special access services. The Commission determined in Docket No. P-495/EM-89-80 that the transport involving POPs constitute special access service, which had not been classified by the legislature nor by the Commission to be emergingly competitive. Although the difference between private line and special access is insignificant, consistent with Commission action in earlier cases involving private line and special access, the Commission should direct MIIC to file an identical tariff for special access.
- ***Relation to the Local Competition Rulemaking Docket:*** Pursuant to Minn. Stat. §237.16, subd. 8 (1995), the authority granted to MIIC is subject to the ongoing local competition rulemaking in Docket No. P-999/R-95-93. Any rules adopted as part of that docket will apply to MIIC's provision of service pursuant to its certificate of authority.

ORDER

1. MIIC is hereby granted authority to offer nonswitched transmission at operating speeds of 1.544 Mbps (DS1 service) and 45 Mbps (DS3 service) within USWC service areas in counties listed in the application, at the following locations: 1) between customer premises, 2) between customer premises and interexchange carriers' points of presence

(POPs), and 3) between POPs. The grant of authority is subject to the clarifications listed in the text of this Order at pages 4 and 5.

2. Within 10 days of this Order, MIIC shall file an identical tariff for special access.
3. Upon execution of any ICB contract, MIIC shall file with the Department a copy of said contract.
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 (612) 297-1200 (TDD/TTY) or 1 (800) 657-3782.