

ISSUE DATE: April 19, 1996

DOCKET NO. P-5243/NA-95-1391

ORDER GRANTING AUTHORITY TO PROVIDE LOCAL SERVICES, AS QUALIFIED,
AND TO RESELL LONG DISTANCE SERVICE

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 a Petition by Choicetel, Inc.
for Authority to Resell Local and Long
Distance Services in Minnesota

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PROCEDURAL HISTORY

On December 18, 1995, Choicetel, Inc. (Choicetel or the Company) filed a petition for authority to resell local and long distance service pursuant to Minn. Stat. §§237.121 (5), 237.16 and 237.075.

On January 17, 1996, GTE Minnesota (GTE) filed comments.

On February 16, 1996, the Minnesota Department of Public Service (the Department) filed comments.

On February 29, 1996, the Minnesota Independent Coalition (MIC) filed comments.

On April 2, 1996, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

A. Choicetel's Request

In its petition, Choicetel stated that it wanted to

- resell Centrex service in the Minneapolis/St. Paul metropolitan area identified as Tier I, II, and III service areas¹, except in Forest Lake and Elk River area Tier III exchanges where USWC's Centrex² service is not currently available;
- resell one-party flat rate business (1FB) service statewide; and
- resell long distance service throughout the state of Minnesota.

Choicetel indicated that it initially intends to concentrate resale to payphone service providers.

Specifically, Choicetel proposed to offer the following services:

- Complex service: the resale of Centrex service in the Metropolitan area, with a 3-line minimum requirement per customer. The \$75.00 monthly rate per line includes standard

¹ The tiers referred to were established by Northwestern Bell, the predecessor of U S WEST Communications, Inc. (USWC). USWC no longer has rate tiers.

² Centrex refers to central office-based switching systems which include what USWC calls Centron. The Commission has rejected USWC's petition to discontinue Centron due to USWC's failure to meet the statutory filing requirements (Order Rejecting Filing Without Prejudice issued March 15, 1996, Docket No. P-421/EM-96-123). Choicetel's intent to resell centrex, therefore, will depend on the outcome of subsequent USWC Centron filings.

features like touchtone, detailed long distance billing, 3-way conferencing, call transfer and call hold. Other enhancements are available on a per feature basis.

- Simple service: the resale of 1FB throughout the state of Minnesota. The monthly charge of \$95.00 per line includes touchtone and detailed long distance billing. Billed number screening, blocking, answer supervision, and other features are available separately.
- Long Distance service: dial station service is offered at rates generally lower than AT&T's at daytime hours and lower mileage bands.

At the hearing on this matter, the Company withdrew its request for authority to provide service in areas served by local exchange companies with 50,000 or fewer subscribers.

B. The Department's Comments

The Department stated that it has reviewed Choicetel's application and finds that it complies with statutory requirements. In addition, the Department noted that the statute requires the provision of business service for resale.³ The Department argued that the Commission does not need to resolve the MIPA complaint case prior to making a determination now.

For service to areas served by telephone companies with more than 50,000 subscribers, Department has reviewed the following:

- Choicetel's notice of application sent to all local telephone companies pursuant to Minn. Stat. § 237.16, subd. 10,
- the applicant's territorial maps showing the locations it intend to serve, submitted as required under Minn. Stat. § 237.16, subd. 3,
- the applicant's financial, technical, and managerial capability to provide the proposed services, and
- the proposed services' terms and conditions as detailed in the submitted tariffs.

The Department stated that Choicetel's application complies with statutory requirements and recommended that the Commission grant the Company authority to provide local and long distance services in areas served by telephone companies with more than 50,000 subscribers.

For areas served by companies with fewer than 50,000 subscribers, the Department recommended that the Commission 1) notify all Independent local exchange carriers (ILECs) of Choicetel's application, 2) establish a procedure on whether to hold a contested case proceeding or expedited proceeding, and 3) make a determination on the application within the statutory nine month time period.

³ Minn. Stat. § 237.16, subd. 5 (Supp. 1995).

C. MIC's Comments

MIC recommended that the Commission suspend or reject Choicetel's application with respect to the resale of local service in areas with less than 50,000 subscribers. According to MIC, if Choicetel's application is limited to the resale of 1FB lines to private payphone providers, the impact on the small ILECs would be significantly different than if Choicetel intends a broader service to business customers. MIC argued that there is not sufficient information to decide the impact on ILECs if the Commission grants the full scope of authority requested by Choicetel. MIC recommended that, with respect to the application for areas served by ILECs with fewer than 50,000 subscribers, the Commission should conduct a hearing or an expedited proceeding and resolve the matter in nine months from the filing of the completed application.

D. GTE's Comments

GTE recommended that the Commission deny or hold Choicetel's application in abeyance pending the resolution of the local competition issues in the rulemaking docket, Docket No. P-999/R-95-53. According to GTE, granting authority to Choicetel prior to the completion of the rulemaking would be premature.

E. Commission Analysis and Action

1. MIC's Recommendation

The Commission notes that Choicetel has withdrawn its request for authority to provide telecommunications service in areas served by telephone companies with fewer than 50,000 subscribers. In these circumstances, since the arguments and recommendations of MIC were directed solely at that part of Choicetel's original application, they need not be considered.

2. GTE's Recommendation

The Commission does not accept GTE's argument that Choicetel's application should be suspended pending completion of the Commission's local competition rulemaking proceeding. Clearly, companies that are currently authorized to provide telecommunications service in Minnesota today and as well as those receiving a grant of authority at this time to provide telecommunications service in Minnesota will be subject to the rules duly adopted in the course of the current rulemaking docket. At the same time, it is also clear that once an applicant has shown grounds for granting a certificate of authority, the Commission does not have the discretion to deny or suspend the application proceeding simply to await the outcome of a related rulemaking.

3. MIPA Complaint

Regarding another somewhat related pending matter, the MIPA complaint, the Commission finds that it is not necessary to resolve the question posed in that matter before addressing Choicetel's application in this matter. The MIPA complaint (Docket No. P-521/CI-95-1036) raises the question whether Minn. Stat. § 237.121 (5) (Supp. 1995) requires USWC to sell 1FB to MIPA members (COCOT providers) for resale. The fact question to be resolved in that

docket (whether USWC's 1FB and PAL services are functionally equivalent) does not directly affect Choicetel's application in this docket because Choicetel is simply seeking authority to resell 1FB.

4. Merits of Choicetel's Request

Having decided these three preliminary questions, the Commission may appropriately proceed to the merits of Choicetel's application. After full review of this matter, the Commission finds that Choicetel has, as recommended by the Department, complied with the applicable statutory requirements. The Commission will, accordingly, grant the authority requested: 1) authority to provide local service (resell Centron and 1FB) to subscribers in areas served by companies with more than 50,000 subscribers and 2) authority to provide long distance service statewide.

a. Local Exchange Service

The Commission finds that Choicetel's application demonstrates the Company's financial, technical, and managerial capability and includes territorial maps as required by Minn. Stat. §237.16, subd. 1 (b) (1995 Supp.). The Commission has also evaluated the terms and conditions of proposed services and found them to be "consistent with fair and reasonable competition, universal service, the provision of affordable telephone service . . ." pursuant to Minn. Stat. § 237.16, subd. 1 (2)(b).

Since the conditions defined under Minn. Stat. §237.16, subd. 1 (1995 Supp.) are met, Minn. Stat. §237.16, subd. 10 (1995 Supp.) allows the Commission to grant authority, subject to the rules required under subd. 8.

To further clarify the scope of authority granted: Choicetel's application for local service authority is limited to the resale of existing services and the Commission's consideration of this matter is limited to the requested authority. The application for authority to resell local services did not present complicated interconnection arrangements that would otherwise have to be considered if the Company wanted to provide switched access or other facilities-based local services. There is no information on which the Commission may base a decision, nor was there any request for, authority other than to resell Centron and 1FB services. If the Company wishes to request further authority in the future, it is free to submit such an application.

b. Long Distance Service

The Commission finds that the record shows that Choicetel has complied with the requirements for resellers of long distance service, as required by the Commission in its Order dated July 13, 1983 in Docket No. P-421/CI-82-619. Accordingly, the Commission's grant of authority to resell long distance service in Minnesota is justified.

ORDER

1. Choicetel's application for authority to provide local service is granted, subject to the adoption of local competition rules in Docket No. P-999/R-95-53, as follows:

- a. Choicetel shall have authority to resell 1FB services to subscribers in areas served by companies with more than 50,000 subscribers; and
 - b. Choicetel shall have authority to resell CENTRON, as requested, in the Minneapolis/St. Paul metropolitan areas formerly identified as NWB's Tier I, II, and III service areas, except in Forest Lake and Elk River area Tier III exchanges where USWC's Centrex service is not currently available.
2. Choicetel's application for authority to resell long distance service throughout Minnesota is granted.
3. Choicetel's withdrawal of its request for authority to provide local service (to resell CENTRON and 1FB services) to subscribers in areas served by companies with fewer than 50,000 subscribers is accepted.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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