

ISSUE DATE: July 15, 1996

DOCKET NO. P-442/NA-96-211

ORDER GRANTING CERTIFICATE OF AUTHORITY WITH CONDITIONS

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 the Application of AT&T
Communications of the Midwest, Inc. for a
Certificate of Authority to Provide Local
Exchange Services

ISSUE DATE: July 15, 1996

DOCKET NO. P-442/NA-96-211

ORDER GRANTING CERTIFICATE OF
AUTHORITY WITH CONDITIONS

PROCEDURAL HISTORY

On February 29, 1996, AT&T Communications of the Midwest, Inc. (AT&T or the Company) filed a petition for a certificate of authority to provide local exchange service in the State of Minnesota.¹

Between March 28 and May 15, 1996, US WEST Communications, Inc. (US WEST), Contel of Minnesota, Inc., d/b/a GTE Minnesota (GTE), United Telephone Company of Minnesota (United), Frontier Communications of Minnesota, Inc. (Frontier), and the Minnesota Independent Coalition (MIC) filed petitions to intervene in the proceeding.

Between April 15 and May 15, 1996, comments were filed by US WEST, Frontier, MIC, the Department of Public Service (the Department), and the Residential Utilities Division of the Office of the Attorney General (RUD-OAG).

On May 28, 1996, US WEST and AT&T filed reply comments.

The matter came before the Commission on July 2, 1996.

FINDINGS AND CONCLUSIONS

¹ Under Minn. Stat. § 237.16, subd. 1(c), the Commission must make a determination on an application for a certificate of authority to provide local service within 120 days of the filing of the application.

After filing its application for a certificate of authority on February 29, 1996, AT&T requested a two week extension for the filing of initial comments. In doing so, AT&T agreed to a two week extension of the 120 deadline for Commission action under Minn. Stat. § 237.16, subd. 1 (c). The Commission's determination on the Company's application is therefore due on or before July 15, 1996.

I. THE PETITIONS TO INTERVENE

US WEST, GTE, United, Frontier, and MIC filed petitions to intervene in this proceeding. No party objected to any of the petitions. Under Minn. Rules, part 7829.0800, subp. 5, if there is no objection to a filed intervention petition and the petition is not denied or suspended within 15 days of filing, the petition is deemed granted. Pursuant to this rule, the petitions to intervene are granted.

If a request for arbitration is filed later in this proceeding, the Commission reserves the right to reevaluate the intervention requests in light of the unique characteristics of the arbitration process. Authority to intervene at this point in the process does not guarantee the right to intervene in any future arbitration phase of the proceeding.

The Commission notes that under Minn. Rules, part 7829.0800, subp. 3, the Department and the RUD-OAG have the right to intervene in any proceeding before the Commission.

II. AT&T'S REQUEST FOR A CERTIFICATE OF AUTHORITY

A. The AT&T Proposal and Comments

AT&T requested authority to provide local exchange service, including basic and ancillary residential and business intraexchange telecommunications service, private line, and switched and special access service. AT&T stated that it intends to provide both facilities-based and resold service on a statewide basis.

AT&T has begun interconnection negotiations under the federal Telecommunications Act of 1996 (the Federal Act) with both US WEST and GTE. AT&T indicated that it is negotiating informally with United on a national level and expects to submit an interconnection negotiation request to United by July 8, 1996. AT&T anticipates filing an interconnection negotiation request with Frontier in 1997. AT&T stated that it is studying the need for interconnection negotiations with other independent local exchange carriers with fewer than 50,000 access lines (ILECs). Even if the Federal Act requires interconnection requests for ILEC territories, AT&T does not anticipate making such requests before late 1997.

AT&T included an illustrative tariff with its filing and a local service area map showing the entire state of Minnesota.

AT&T stated that it would not oppose the Commission's placing the following conditions on its certificate: 1) a requirement to file tariffs which contain rates and charges as well as regulations under which AT&T will provide facilities and services to customers; 2) a requirement to file Commission-approved agreements for interconnection, services or network elements arrived at through negotiation or arbitration under the Federal Act; and 3) a commitment that the Company will abide by all applicable state statutes and regulations not inconsistent with the Federal Act and related FCC rules which promote competition, support universal service, and help assure affordable, high quality service.

AT&T stated that it did not need to have an exact “plan” for offering service to each LEC and ILEC territory in the state. AT&T is currently working under the federal timelines to negotiate the terms and conditions of interconnection with GTE and US WEST; a “plan” for service would not even be possible for these areas at this time.

AT&T stated that it is not pursuing a Commission determination of a temporary interconnection arrangement under Minn. Stat. § 237.16, subd. 1, but is focusing on the ultimate negotiation and interconnection agreement provisions of the Federal Act.

B. Positions of the Parties

1. The Department

The Department recommended that the Commission approve AT&T’s request for a certificate of authority with the following conditions: 1) the certificate is only for the US WEST and GTE exchanges, unless AT&T provides the Commission with specific plans for providing service in the other LECs’ territories. AT&T may expand its service area later, if necessary, by amending its certificate as permitted under Minn. Stat. § 237.16, subd. 4; 2) prior to offering local service in the area of an incumbent LEC, AT&T must obtain Commission approval of its interconnection agreement with the LEC; and 3) prior to offering service, AT&T must obtain Commission approval of its tariff.

The Department stated that the impact of the Federal Act and Minnesota statutes on service to ILECs is as yet unclear. The Department recommended excluding the ILECs from AT&T’s conditional certificate of authority at this time.

The Department stated that AT&T has made no commitment to serve statewide. The Department believed that a definite plan to serve certain areas in a certain time is necessary for certification. Without such a requirement, every new entrant will ask for automatic statewide certification, the Commission will be breaking from its precedent, and the provisions for certificate amendment and notice in Minn. Stat. § 237.16 will be ignored.

2. The RUD-OAG

The RUD-OAG stated that AT&T’s request for statewide authority to serve is premature because the Company is not ready, willing, and able to provide statewide service at this time. In addition, AT&T’s application lacks the necessary information to determine if the Company’s entry fulfills the requirements of Minn. Stat. § 237.16, subd. 1. Under that statute, the proposed service must be consistent with the provision of universal service, fair competition, and affordable and high quality service.

The RUD-OAG argued that AT&T’s statewide application violates the rules of statutory construction because it renders meaningless the statutory requirements to file a territorial map and an application to amend the company’s certificate of authority.

The RUD-OAG stated that the Federal Act does not preempt the Minnesota certification

process, as implied by AT&T's filing.

According to the RUD-OAG, AT&T is seeking the right to provide statewide service without taking on any of the corresponding service obligations.

3. US WEST

US WEST agreed with the RUD-OAG that AT&T's filing lacks substance. According to US WEST, AT&T wants unfettered rights to serve in Minnesota without service obligations.

US WEST agreed with the Department that AT&T's certificate should be conditioned on the filing and approval of an appropriate tariff after the Company has negotiated an interconnection agreement. In essence, this procedure would defer evaluation of the terms under which AT&T will offer its services to a later date. At that time, AT&T must demonstrate that it has satisfied its statutory responsibilities in the same manner as any other local service provider regulated by the Commission.

4. Frontier

Frontier stated that the Federal Act grants rural telephone carriers such as Frontier certain significant rights, including: 1) a determination by the Commission whether a company competing to provide local service to Frontier's territory must become an Eligible Telecommunications Carrier (ETC) [Section 253 (f) and 214 (e)(1)]; 2) the right to negotiate a voluntary interconnection arrangement which waives some or all of the federal interconnection requirements [Section 252 (a)]; 3) the right to seek mediation or arbitration concerning interconnection arrangements [Section 252 (b)]; and 4) the right to request suspension or modification of any or all federal interconnection obligations [Section 251 (f)(1)].

Frontier stated that AT&T has not yet requested negotiations with Frontier. Until AT&T discloses specifically which of Frontier's customers it intends to serve, which exchanges it intends to serve, and how it intends to provide service in those exchanges, it is impossible to determine if AT&T should become an ETC, or what federal or state rights should be granted to AT&T or Frontier. The Commission should therefore not include Frontier's service territory in any certificate of authority currently granted to AT&T. AT&T may apply for an amended certificate of authority under Minn. Stat. § 237.16, subd. 4 when it has an exact business plan for serving Frontier customers.

5. MIC

MIC, a coalition of over 80 Minnesota ILECs, asked the Commission to dismiss or reject the AT&T application in regard to all areas for which the Company lacks current plans to serve. MIC gave several reasons for its request. First, Minn. Stat. § 237.16 requires that certificates of authority be granted only for areas that a company actually plans to serve and does serve. Second, in the absence of any actual service plans, the Commission will be unable to conduct a fact-based review of the impact that AT&T's proposal will have on customers, as required under Minn. Stat. § 237.16. Third, the public interest determinations of Minn. Stat. § 237.16 are entirely consistent with the public interest determinations of the Federal Act. Both the Federal Act and Minn. Stat. § 237.16 clearly intend that the interests of rural consumers will be protected. Those protections must be implemented before AT&T is permitted to serve.

C. Commission Action

1. The Standards for Granting a Certificate of Authority

The standards for Commission approval of a petition for authority to provide new service are found at Minn. Stat. § 237.16, subd. 1(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 commission rules, and the commission's rules.

2. AT&T's Application for a Certificate of Authority Considered under the Statutory Standards

a. The Necessary Technical, Managerial, and Financial Resources

AT&T Communications of the Midwest, Inc. is a wholly-owned subsidiary of AT&T Corporation. In 1994, AT&T Corporation and its subsidiaries had \$43 billion in sales of telecommunications services. AT&T Corporation has indicated that it will provide any necessary technical, managerial, and financial resources for its subsidiary's provision of local service in Minnesota.

AT&T has provided telecommunications service in Minnesota for over 100 years. AT&T is currently authorized by the Minnesota Secretary of State to do business in the State.

No party alleged that AT&T lacks the necessary technical, managerial, or financial resources to provide local service within the State.

The Commission finds that AT&T has demonstrated that it possesses the requisite technical,

managerial, and financial resources for certification under Minn. Stat. § 237.16, subd. 1 (b).

b. Other Standards for Certification under Minn. Stat. § 237.16, subd. 1 (b)

Under Minn. Stat. § 237.16, subd. 1(b), the terms and conditions under which the applicant will be certified must be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.

The Commission finds that these essential factors cannot be determined upon examination of AT&T's application alone. Only through analysis of the Company's filed tariffs and interconnection arrangements can the Commission consider such issues as the exact services proposed; the market and classes of customers targeted; the implications of universal service requirements; quality standards; the scope of the intended local calling area; rates; and terms and conditions of the interconnection arrangements.

The Commission has determined that AT&T possesses the requisite managerial, technical, and financial abilities to provide service in Minnesota. The other essential standards under Minn. Stat. § 237.16, subd. 1(b) can only be demonstrated through the Company's filed tariffs and interconnection arrangements with incumbent LECs. The Commission will therefore grant AT&T a conditional certificate of authority, contingent upon:

- eventual Commission approval of the Company's filed tariffs
- eventual Commission approval of the Company's interconnection arrangements

The Commission finds that the condition of approval for interconnection arrangements and tariffs should answer many of the Department's, RUD-OAG's, and US WEST's concerns regarding the substance of AT&T's filing and the specifics of proposed service. In order to more fully address these public interest and fair competition concerns, the Commission will add the following conditions to the certificate:

- AT&T must include in its tariff a list of all areas (by municipality) where AT&T actually provides service, with that list to be updated as AT&T expands its service territory
- AT&T's authority, service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in rulemaking Docket No. P-999/R-95-53

3. Other Issues Raised by the Parties

In its filings, AT&T stated that Commission approval is not necessary for its tariffs, since the Company is regulated as a telecommunications carrier under Minnesota statute. The Commission disagrees with AT&T's analysis; as previously stated in this Order, Commission approval of tariffs will be a condition of certification. Minn. Stat. § 237.035(e) provides that a

telecommunications carrier's local service will be subject to Minn. Stat. Ch. 237, with the exception of rate of return investigations and depreciation requirements. Minn. Stat. § 237.16, subd. 13 states that, pending adoption of the Commission's local competition rules, "the local services provided by a telecommunications carrier are subject to this chapter in the same manner as those local services of a telephone company regulated under this chapter..." (with the same two exceptions). Minn. Stat. § § 237.06 and 237.07 require telephone companies to file their tariffs, which are subject to the requirement of being fair and reasonable. AT&T must therefore obtain Commission approval of its tariffs and such approval is appropriately placed as a condition of certification.

The Department, RUD-OAG, Frontier, and MIC expressed concern regarding the statewide scope of the Company's certification. The parties expressed particular concern regarding protections for ILECs which may be abrogated if area-specific certification and certificate amendment are not required. The Commission finds that its certification process, whether confined to a specific area or considered statewide, will not impinge on the protections built into the Federal Act.

When AT&T specifically requests interconnection with an ILEC, that ILEC will have available to it the full protections for ILECs contained in the Federal Act. Those protections will include: 1) ILEC exemption from the negotiation and interconnection requirements of § 251 (c); 2) the right of ILECs to petition for a suspension or modification of the obligations and interconnection requirements of § 251 (b) or (c); 3) the arbitration process for resolving disputed issues between negotiating carriers; 4) the Commission review and approval process for negotiated and arbitrated agreements; and 5) the authority to require that AT&T qualify as an ETC before providing service in an ILEC territory. When AT&T requests interconnection with an ILEC, the process will be subject to the same nine month negotiation/mediation/arbitration process imposed on negotiations with LECs under the Federal Act.

In order to ensure that all parties understand that LECs and ILECs will maintain their full protections under the Federal Act in their negotiations with AT&T, the Commission will place the following further condition upon AT&T's certificate:

- AT&T must proceed toward implementation of local service through a process which maintains all LEC and ILEC protections afforded under the Federal Act

The state certification process and the protections of the Federal Act will be considered together by the Commission when it addresses a new entrant's negotiation with an ILEC. When AT&T requests interconnection with a particular ILEC, the Commission will determine if AT&T should be allowed to provide local service in that territory under the provisions of both the state statutes and the Federal Act. If the Commission determines that AT&T should not be allowed to provide service in the ILEC territory, the Commission will make a finding that AT&T has not met one of the conditions of its certificate for that exchange (that is, the condition of having observed all

rights of the incumbent ILEC under the Federal Act). AT&T's statewide authority will then be limited to exclude the ILEC exchange.

D. Conclusion

The Commission has determined that AT&T possesses the requisite managerial, technical, and financial abilities to provide local service in Minnesota. The other essential standards under Minn. Stat. § 237.16, subd. 1(b) can only be demonstrated through the Company's filed tariffs and interconnection arrangements with incumbents. In order to address parties' concerns regarding the specific nature of AT&T's proposed service, the Commission will require the Company to include in its tariff an updated list of all areas actually served. The Commission will require AT&T to implement local service in a manner which maintains all rights of incumbent LECs and ILECs under the Federal Act; this requirement will be memorialized as a condition of the certificate. Finally, as a new entrant, AT&T's authority, service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in rulemaking Docket No. P-999/R-95-53.

ORDER

1. If a request for arbitration is filed later in this proceeding by US WEST, GTE, United, Frontier, or MIC, the Commission reserves the right to reevaluate the parties' intervention requests in light of the unique characteristics of the arbitration process. The authority for these parties to intervene at this point in the process does not guarantee their right to intervene in any future arbitration phase of the proceeding.
2. The Commission grants AT&T a certificate of authority to provide local exchange service in the State of Minnesota, subject to the following conditions:
 - AT&T must obtain prior Commission approval of the Company's filed tariffs
 - AT&T must obtain prior Commission approval of the Company's interconnection arrangements
 - AT&T must include in its tariff a list of all areas (by municipality) where AT&T actually provides service, with that list to be updated as AT&T expands its service territory
 - AT&T's authority, service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in rulemaking Docket No. P-999/R-95-53
 - AT&T must proceed toward implementation of local service through a process which maintains all LEC and ILEC protections afforded under the Federal Act
3. 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.