

ISSUE DATE: March 21, 1997

DOCKET NO. P-466/NA-96-927

ORDER GRANTING AUTHORITY, WITH CONDITIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Mac McCollar
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Application of Sprint
Communications Company for a Certificate of
Authority to Provide Local Exchange and
Exchange Access Telecommunications
Services

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PROCEDURAL HISTORY

On August 13, 1996, Sprint Communications Company L.P. (Sprint) filed its application for a Certificate of Authority to provide local exchange and exchange access telecommunications services throughout the state of Minnesota, pursuant to Minn. Stat. § 237.16.

On October 14, 1996, US WEST Communications, Inc, (USWC) submitted comments and a request for intervention.

On October 14, 1996, the Minnesota Independent Coalition (MIC) filed comments recommending that the Commission not grant Sprint statewide authority.

On October 14, 1996, the Minnesota Department of Public Service (the Department) filed comments recommending that the Commission grant Sprint a certificate to operate in exchanges where GTE Minnesota (GTE) and U S WEST Communications, Inc. (USWC) are the incumbent local exchange carrier.

On October 23, 1996, Sprint filed reply comments.

On October 24, 1996, MIC submitted reply comments and a request for intervention.

The matter came before the Commission on March 11, 1997.

FINDINGS AND CONCLUSIONS

I. SPRINT'S APPLICATION

Sprint is a limited partnership of four companies, all of which are subsidiaries of Sprint Corporation. Sprint is currently authorized to provide intrastate interLATA and intraLATA interexchange services in Minnesota. Also, Sprint has obtained authority to provide competitive local exchange and exchange access services in fourteen jurisdictions.

Sprint will initially provide service by reselling the services of incumbent local exchange carriers and will deploy its own facilities as economic factors, including customer demand, dictate and allow.

II. THE PARTIES' COMMENTS

A. The Department's Comments

The Department found, in its comments dated October 14, 1996, that Sprint has the necessary financial, technical and managerial ability to operate as a telephone company in Minnesota, as required by Minn. Stat. § 237.16, subd. 1(b).

In response to Sprint's request for statewide authority, the Department pointed out that Sprint has not demonstrated that it has a firm plan to provide service in the territories of the smaller local exchange companies. Therefore, the Department recommended that Sprint be granted a certificate of authority only for the territories of GTE and USWC. The Department stated that Sprint may expand its service area by amending its certificate as permitted under Minn. Stat. § 237.16, subd. 4. In addition, the Department argued, special issues may arise concerning the smaller local exchange companies, which can be addressed when Sprint establishes definite and specific plans to serve those exchanges and files an amendment to its certificate to include those exchanges.

B. USWC's Comments

In comments filed October 14, 1996, USWC raised a number of issues, including the following:

- The Federal Telecommunications Act, (the Act) while removing barriers to entry, still permits states to apply as much of their regulatory structures as are consistent with the Act, and are on a competitively neutral basis. Sprint should be held to the same standards as USWC on dialing parity and interLATA and intraLATA toll subscription.
- Sprint must be required to comply with all applicable standards of Minn. Stat. Ch. 237. Some key areas that need to be applied are: justification of rates; nondiscriminatory treatment of customers; and rates being required to cover the incremental cost of service.

USWC stated that these issues are only illustrative and that Sprint should be required to receive identical regulatory treatment as USWC. To do less, USWC argued, would be contrary to the intent embodied in the Act.

C. MIC's Comments

MIC opposed the idea of Sprint being granted state-wide authority. MIC argued that the complications raised by the AT&T/GTE arbitration discussions clearly demonstrate the need for predictable and well defined processes and procedures to resolve the additional complex issues that face the Commission in relation to competition in rural areas. These issues must be resolved in a logical sequence to give the Commission a reasonable opportunity to address all

of the factors provided under the Act and Minn. Stat. Ch. 237 and to allow the parties to negotiate in a meaningful way.

MIC suggested that the most effective and efficient approach would be for the Commission to defer the hearing and further investigation required under Minn. Stat. § 237.16, subds. 4 and 11 until if and when Sprint actually intends to provide local service in Independent Local Exchange Carrier (Independent LEC) areas.

MIC further noted that currently Sprint has no specific plans to provide service in any Independent LEC area, that no negotiations are pending between Sprint and an Independent LEC, and that Sprint does not know when such negotiations may begin.

Consequently, MIC recommended that the Commission limit Sprint's certificate of authority to exchanges where Sprint is currently in negotiations and has immediate plans to provide service.

III. COMMISSION ANALYSIS

A. Intervention

Minn. Rules, Part 7829.0800 requires a person who desires to become a party to a proceeding to file a petition to intervene. If a petition to intervene is filed and there is no objection and the petition is not denied or suspended or the matter referred to the Office of Administrative Hearings (OAH) within 15 days of filing, then the petition to intervene is deemed granted under Minn. Rules, Part 7829.0800, subd. 5.

There have been no objections to the petitions to intervene filed in this matter nor have the petitions been denied, suspended or referred to the OAH within 15 days of the date that they were filed.

Accordingly, the petitions of MIC and USWC are considered granted. Both MIC and USWC will have the status of intervenors in this matter.

B. Protective Process for Independent LECs

Minn. Stat. § 237.16, subd. 11, provides a separate procedure for Commission determination of a new entrant's application to provide local service in a territory served by a telephone company with fewer than 50,000 subscribers. Specifically, this provision provides that an Independent LEC is entitled to a contested case or an expedited hearing when a new company requests certification to provide local service in the Independent LEC's territory. MIC stated that the Commission should defer the hearing and investigation processes set forth under Minn. Stat. § 237.16, subd. 11, until Sprint actually intends to provide local service in Independent LEC areas.

The Commission recognizes that Independent LECs facing local competition are entitled to the protections under Minn. Stat. § 237.16, subd. 11, until local competition rules for small LECs are developed. Important issues unique to Independent LECs must be addressed outside the normal arbitration/interconnection proceedings. While the procedures required under Minn. Stat. § 237.16, subd. 11 should be deferred until a new entrant has actually planned to expand into a Independent LEC's territory, the procedures cannot be eliminated or superseded by the federal interconnection/arbitration process.

In sum, the Commission finds that Sprint may defer the Minn. Stat. § 237.16, subd. 11, proceedings until the company contemplates interconnection with each particular Independent LEC, but may not eliminate the state proceeding.

C. Certificate of Authority

The Commission has reviewed Sprint's application under the standards enunciated in Minn. Stat. § 237.16, subd. 1(b) which states:

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 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.

Resources: The Commission has reviewed Sprint's application and supporting documentation, as well as all of the filed comments, and finds that Sprint does possess the technical, managerial and financial resources to provide local exchange services in Minnesota as required under Minn. Stat. § 237.16, subd. 1(b). The Commission notes that no party has challenged Sprint's technical, managerial or financial ability to provide local service within the state of Minnesota.

Service Area: The Commission also agrees with the Department and MIC that Sprint should not be granted a certificate of authority for the entire state of Minnesota. Sprint's proposed statewide local certificate runs contrary to the goals the legislature carefully addressed in Minn. Stat. § 237.16, the state certification statute because the company has not demonstrated an ability and intent to serve the entire state, as indicated by the commencement of interconnection negotiations. Accordingly, the Commission will grant Sprint a certificate of authority to serve areas for which it has plans to serve, the areas currently being served by GTE and USWC.

Terms and Conditions: Under Minn. Stat. §237.16, subd. 1(b), the terms and conditions under which an applicant may be certified to provide local service 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. Many of these factors are best determined through analysis of Sprint's filed tariffs and interconnection agreements with incumbent LECs.

Therefore, the Commission will condition Sprint's certificate upon Commission approval of Sprint's filed tariffs and interconnection agreements. In order to evaluate public interest and fair competition concerns, the Commission will add conditions to Sprint's certificate to include in its tariff a list of all areas (by municipality) where Sprint actually provides service, with that list to be updated as Sprint expands its service territory and state that Sprint's authorized service offerings, and terms and conditions of service will be subject to the Commission's local competition rules being developed in Docket No. P-999/R-95-53.

In response to USWC's comments: By virtue of this process Sprint is accepting jurisdiction of the Commission and relevant state statutes, Commission Orders and rules. Additionally, the Commission will be evaluating Sprint's tariff when it is filed to determine whether the company has included language regarding a customer's rights under dialing parity and whether it complies with other Commission rules. Also, the local competition rulemaking will answer many of USWC's concerns. Finally, as the Commission noted in granting a conditional certificate of local authority to Frontier Local Services, Inc., the Commission does not agree with USWC's notion that CLECs should be required at this time to fulfill exactly the same obligations as the incumbent providers of local service. In that Order, the Commission stated:

At this point in the development of local competition, the legislature clearly has not required that the playing field be leveled **in that sense** and it is the Commission's judgment that to do so at this time would not promote fair and reasonable competition for local exchange telephone services.¹ [Emphasis added.]

IV. COMMISSION ACTION

Based on the foregoing analysis, the Commission finds that Sprint meets the criteria specified in Minn. Stat. § 237.16, subd. 1 (b) and will grant Sprint authority to provide local service consistent with conditions recently applied to other companies seeking similar authority, as set forth below in Ordering Paragraph 3 of this Order.

ORDER

1. The petitions for intervention filed by MIC and USWC are considered granted by operation of Minn. Rules, Part 7829.0800, subd. 5.
2. The application of Sprint Communications Company, L.P. (Sprint or the Company) for a certificate of authority to provide local exchange and exchange access telecommunications service as an alternative local carrier is conditionally approved, as specified in Ordering Paragraph 3.

¹ See In the Matter of an Application for a Certificate of Authority to Provide Local Exchange and Exchange Access Telecommunications Services as an Alternative Local Carrier, Docket No. P-5442/NA-96-1523, ORDER GRANTING AUTHORITY, SUBJECT TO CONDITIONS (March 21, 1997) at page 4.

3. The conditions attached to Sprint's certificate of authority are as follows:
 - a. Sprint's authority to provide local service is limited to exchanges where USWC and GTE are the incumbent local exchange carriers, pursuant to Minn. Stat. § 237.16.
 - b. Sprint shall file for an amended certificate of authority and receive Commission approval pursuant to Minn. Stat. § 237.16, subd. 4 before expanding its local service area;
 - c. prior to providing local service, Sprint shall submit service area maps pursuant to Minn. Stat. § 237.16, subd. 3, and Minn. Rules 7810.0500 and to maintain such maps with the Department that show the exchanges where Sprint can actually provide local service;
 - d. prior to providing local service, Sprint shall submit to the Commission for approval any local service interconnection agreements negotiated with an incumbent local exchange carrier, pursuant to § 252(b)(4) of the Telecommunications Act of 1996;
 - e. Sprint shall file a tariff for Commission approval that contains the rates and applicable terms and conditions for its local services;
 - f. Sprint shall be subject to the rules arising from the rulemaking proceeding in Docket No. P-999/R-95-53;
 - g. Sprint shall proceed toward implementation of local service through a process which maintains all LEC and Independent LEC protections afforded under Minnesota statutes and the Federal Telecommunications Act of 1996; and
 - h. Sprint shall add language in its tariff clarifying a customer's rights under dialing parity when the Company files its tariff.
4. Parties shall have 45 days following the filing of Sprint's initial tariff to file comments thereon. Reply comments shall be due 20 days thereafter.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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