

ISSUE DATE: July 31, 1998

DOCKET NO. P-5508/M-98-561

ORDER GRANTING IN PART, DENYING IN PART, STATUS AS ELIGIBLE
TELECOMMUNICATIONS CARRIER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Crystal Communications’
Petition to Become an Eligible
Telecommunications Carrier

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PROCEDURAL HISTORY

On February 8, 1996, the federal Telecommunications Act of 1996 became effective. Among other things, the Act establishes principles of “universal service” (47 U.S.C. § 254(b)¹), and a funding mechanism to support universal service (§ 254(d)). However, generally only “eligible telecommunications carriers” (ETCs) are eligible to receive support from this fund.² § 254(e). For a telecommunications carrier to qualify as an ETC —

- it must be a common carrier;
- it must offer the services that are supported by the Federal universal service support mechanisms -- including “toll limitation” -- throughout the service area for which the designation is received, using some of its own facilities;
- it must advertise the availability of such services and the charges therefor using media of general distribution throughout the service area for which the designation is received; and
- if an ETC already serves the area for which the designation is received, the designation of an additional ETC must be consistent with the public interest, convenience and necessity.

¹All citations are to United States Code, Title 47, unless otherwise specified.

²Exceptions exist for telecommunications carriers serving educational providers and libraries (47 C.F.R. §§ 54.201(a)(3), 54.500(1)), or providing an eligible health care provider for rural areas with toll-free access to an Internet service provider (47 C.F.R. §§ 54.201(a)(2), 54.621(a)).

§§ 214(e)(1), (2).

On June 4, 1996, the Commission directed local exchange companies to offer toll blocking services to all customers without charge, or to seek a waiver from this requirement.³

On December 23, 1997, the Commission designated each of Minnesota's incumbent local exchange companies (LECs) as an ETC for its service area.⁴ Two aspects of this order are relevant to the present docket:

First, to fulfill the requirement that each ETC "advertise the availability of [the relevant] services and the charges therefor using media of general distribution" throughout its service area (§ 214(e)(1)(B)), the Commission directed each ETC to submit an advertising plan, including a) a description of available services and their rates; b) the geographic area where those services are available; c) the medium of publication of the advertising, including names of, and geographic areas served by, the newspapers in the plan; and d) the size and type of the advertising.

Second, 47 C.F.R. § 54.400(d) implied that ETCs must provide "toll control," which enables a subscriber to limit the amount of toll charges she incurs, as part of the statutory requirement to provide "toll limitation." Minnesota's LECs could not provide this service. The Minnesota Public Utilities Commission, facing a December 31 federal deadline to designate ETCs, granted ETC status to LECs, and granted a one-year extension to begin providing toll control provided that the Federal Communications Commission (FCC) did not change its rule.

On December 30, 1997, the FCC concluded that ETCs need not provide toll control.⁵

³In the Matter of an Investigation into Disconnection of Local Telephone Service for Non-Payment of Toll Charges and Elimination of Separate Monthly Toll Blocking Charges, Docket No. P-999/CI-96-38, ORDER REGARDING LOCAL DISCONNECTION AND TOLL BLOCKING CHARGES (June 4, 1996).

⁴In the Matter of the Request by Members of MIC for Designation as an Eligible Telecommunications Carrier and Temporary Suspension of Certain Toll Restriction Services; In the Matter of the Requests by Other Incumbent LECs for ETC Designation, P-999/M-97-1270, ORDER DESIGNATING PETITIONERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS, ALLOWING ADDITIONAL TIME TO PROVIDE CERTAIN SERVICES, APPROVING RATE REDUCTION FOR QUALIFIED LOW INCOME CUSTOMERS, AND REQUIRING FILINGS (December 23, 1997).

⁵In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FOURTH ORDER ON RECONSIDERATION IN DOCKET NO. 96-45, FCC 97-420 (December 30, 1997).

On April 23, 1998, Crystal Communications, Inc. (Crystal) filed a petition asking the Commission to designate Crystal an ETC for areas within the 507 area code served by Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE), Frontier Communications of Minnesota, Inc. (Frontier), Sprint and U S WEST Communications, Inc. (U S WEST). Crystal proposed to offer toll blocking service only to business customers, for a specified fee.

On May 4, 1998, Frontier filed a petition to intervene, and to dismiss Crystal's petition as it relates to Frontier's service area.

On May 5, 1998, Crystal amended its petition to request to receive the benefits of the Commission's December 23 order granting a one-year extension to provide toll control services.

On May 13, 1998, U S WEST filed a petition to intervene.

Also on May 13, both Frontier and U S WEST filed comments recommending rejection of the petition; the Department of Public Service (Department) filed comments recommending approval. On May 26, Frontier and U S WEST filed reply comments.

On July 14, 1998, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

A. Crystal Communications, Inc.

Crystal intends to fulfill all the requirements throughout the requested area within one year. Crystal is constructing a switch in the Nicollet exchange (currently served by U S WEST), and plans to fulfill all ETC requirements in that exchange by the end of July, 1998. Crystal stated that it seeks ETC status to enable it to compete on an equal basis with the incumbent local exchange carriers. Crystal has obtained Commission-approved interconnection agreements with Sprint and U S WEST, anticipates approval of an interconnection agreement with GTE soon, and has requested an agreement with Frontier. Crystal does not consider GTE, Frontier, Sprint or U S WEST to be a rural telephone company under 47 U.S.C. § 153(37).

B. Department of Public Service

The Department takes the position that, while Crystal does not currently serve any customers, Crystal plans to begin operating sufficiently soon as to fulfill the ETC requirements. The Department anticipates no adverse impact from granting ETC status to Crystal, asserting that Crystal would only receive Universal Service funding when, and to the extent that, Crystal actually served customers. The Department recommends granting Crystal the same extensions granted to other ETCs in its Commission's December 23, 1997 Order — specifically, an

extension on time to file an advertising plan, and to provide toll control service. Additionally, the Department recommends directing Crystal to provide toll blocking free of charge, consistent with the Commission's June 4, 1996 Order.

C. Frontier Communications of Minnesota, Inc.

Frontier argues that Crystal's application fails to allege that Crystal has fulfilled the requirements to achieve ETC status. Crystal expresses an intent to fulfill the requirements, according to Frontier, but offers no services, has no facilities, has not advertised its services in Frontier's service area, and does not have an interconnection agreement with Frontier. According to Frontier, mere expressions of intent cannot fulfill the ETC requirements. Additionally, Frontier claims rural telephone company status, and argues that the Commission should not grant Crystal ETC status in Frontier's service area without first establishing that doing so would be in the public interest.

Frontier anticipates potential harm from granting Crystal's petition. First, Crystal could obtain certain benefits of ETC status (*e.g.*, Universal Service funding for high cost areas and rural health care providers) without incurring the costs of providing all the benefits that ETCs are supposed to provide (*e.g.*, offering all the required services throughout the designated area). Additionally, Frontier would be required to divide its federal Universal Service funds with a competing ETC, potentially leading to higher rates for Frontier's remaining customers. The Commission would not be able to predict the degree of harm to Frontier's customers, and therefore could not assess the public interest, until Crystal begins providing service.

For these reasons, Frontier asked the Commission to dismiss Crystal's petition with respect to Frontier's area until Crystal fulfills the requirements of an ETC.

D. U S WEST Communications, Inc.

U S WEST argues that Crystal's application fails to allege that Crystal has fulfilled the requirements for ETC status, and that a mere expression of intent to fulfill the requirements does not appear to satisfy the requirements. In particular, the record does not demonstrate Crystal's ability to build facilities to serve new customers within the time frames specified in Commission rules.

II. Commission Action

A. Toll Control

As noted above, the Commission's December 23, 1997 order granted ETCs a year to comply with the federal requirement to provide toll control, unless the FCC retracted the requirement. The FCC's Order of December 30, 1997, concluded that ETCs need not provide toll control. As a result, this aspect of the Commission's Order is moot. Accordingly, Crystal's request to receive the benefits of this aspect of the Order is moot.

B. Service Area

1. Exchanges in the 507 Area Code Served by GTE, Frontier, Sprint and U S WEST, Other Than the Nicollet Exchange

The record of this case is insufficient to permit the Commission to conclude that Crystal fulfills the ETC requirements throughout the areas within the 507 area code served by GTE, Frontier, Sprint and U S WEST. To the contrary, Crystal concedes that it does not serve any customers, does not own facilities outside of the Nicollet exchange area, and could not promise to provide the required services throughout the requested area within less than a year. As a result, the Commission cannot conclude that Crystal will offer services “throughout the service area for which the designation is received....” § 214(e)(1). Accordingly, at this time the Commission will not grant Crystal’s petition for ETC designation with respect to any area other than the Nicollet exchange.

2. The Nicollet Exchange

Regarding the Nicollet exchange, Crystal states an intent to provide the necessary services throughout the area by the end of July, 1998. In order to avoid needlessly impeding Crystal’s progress, and in the interest of facilitating competition, the Commission will grant Crystal’s petition with respect to the Nicollet exchange area. However, the Commission shares many of the concerns raised by Frontier and U S WEST about Crystal’s fulfillment of the ETC requirements. Therefore, the Commission will grant the petition subject to the following conditions:

First, Crystal must provide proof of the availability of all supported services throughout the designated service area, as required by 47 U.S.C. § 214(e)(1)(A).

Second, Crystal must list and describe all facilities used in providing the designated services, in support of the previous requirement.

Third, Crystal must file an advertising plan meeting the requirements set forth in the Commission’s December 23, 1997, ORDER DESIGNATING PETITIONERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS.

Fourth, Crystal must offer toll blocking free of charge to all customers, consistent with the Commission’s June 4, 1996, ORDER REGARDING LOCAL DISCONNECTION AND TOLL BLOCKING CHARGES.

Fifth, Crystal must state why granting ETC status to Crystal is in the public interest, as required by 47 U.S.C. § 214(e)(2).

Finally, the Commission will direct Crystal to make a filing within 30 days of the date of this Order satisfying the requirements listed above.

ORDER

1. The Commission denies Crystal Communications, Inc.'s petition to become an eligible telecommunications carrier except as provided below.
2. The Commission grants Crystal Communications, Inc.'s petition to become an eligible telecommunications carrier with respect to the Nicollet exchange area, on the condition that Crystal —
 - a. show proof of the availability of all supported services throughout the designated service area;
 - b. list and describe all facilities used in providing services;
 - c. file an advertising plan;
 - d. offer toll blocking free of charge to all customers; and
 - e. state why granting ETC status to Crystal is in the public interest.
3. Within 30 days of the date of this Order, Crystal shall make a filing satisfying the requirements of Ordering paragraph 2.
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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