

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Phyllis A. Reha	Commissioner
Gregory Scott	Commissioner

In the Matter of a Request by Sprint
Communications Company L.P. for a Time
Extension and a Variance of Commission Rules

ISSUE DATE: October 20, 2003

DOCKET NO. P-466/EM-03-658

ORDER VARYING RULES AND
GRANTING EXTENSION

PROCEDURAL HISTORY

On August 17, 2000, the Commission in its ORDER VARYING RULES REQUIRING SERVICE FOR THREE YEAR PERIOD¹ granted Sprint Communications Company L.P. (Sprint) a three year extension to provide local exchange service within its service territory.

On April 28, 2003, Sprint filed a request for an additional three year extension and a variance to comply with Minnesota Rules, part 7812.0200, subp. 4 and part 7812.0600.

On May 12, 2003, the Department of Commerce (DOC) filed comments recommending that the Commission approve Sprint's request.

On May 27, 2003, the Commission issued its ORDER GRANTING TIME EXTENSION AND VARIANCE. This Order was issued by the Commission's consent calendar subcommittee and becomes the Order of the full Commission unless an objection is filed within ten days.

On May 30, 2003, Qwest filed comments objecting to the ORDER GRANTING TIME EXTENSION AND VARIANCE.

On September 25, 2003, the matter came before the Commission.

¹ In Docket No. P-5487, 3012,5321,466/M-00-520.

FINDINGS AND CONCLUSIONS

I. Background

Sprint filed its petition in order to avoid the automatic revocation of its authority to provide local service that would occur for failure to provide, throughout its entire local service area, local service consistent with Minn. Rules, part 7812.0600, within the 36-month timeframe set by Minn. Rules part 7812.0200, subp. 4.

Sprint is authorized to provide competitive local service in Minnesota in the territories served by Qwest, Citizens Telecommunications Company of Minnesota, Inc. (formerly GTE-Minnesota)(Citizens) and Sprint Minnesota, Inc. Sprint has recently begun offering competitive local service in certain Qwest exchanges based on the availability of Qwest's unbundled network elements (UNE) platform. The services offered are currently limited to residential customers.

II. Sprint's Request

Sprint requested that it be granted additional three-year variances to the service requirements set forth in Minn. Rule part 7812.0200, subp.4, and part 7812.0600. Specifically, the variances would give Sprint until July 28, 2006, to offer services to all customers throughout Qwest territory, until September 23, 2006 in Citizen territory, and until January 26, 2007, in Sprint Minnesota territory.

In support of its petition, Sprint argued that the development of local competition was taking longer than anticipated and that factors beyond Sprint's control, such as regulatory uncertainty and difficult economic conditions, have been the primary obstacles.

Sprint argued that a revocation of Sprint's authority for failure to offer service to all customer classes would harm residential customers currently benefitting from competitive service and would not further the goal of increasing competition. The requested variance should be granted, Sprint argued, because enforcement of Minn. Rules Part 7812.0600 would impose an excessive burden on Sprint. Further, granting the variance would not adversely affect the public interest and would not conflict with standards imposed by law.

III. Qwest's Position

Qwest argued that, if Sprint's current request is granted, Sprint will have had a total of nine years to come into compliance with the rules and there is no assurance that Sprint will be in compliance at the end of the nine years. It argued that Sprint has already been allowed six years to comply with the rule, that Sprint makes no representation that it will provide service as required under the rule at the end of an additional three year period, and that Sprint does not provide any reason for its current failure to meet the rule requirements. Qwest argued that Minn. Rules part 7812.0200, subp. 5 requires that Sprint provide not only a basis for its failure to meet the deadline but also provide an alternative date by which it will begin offering service in the areas in which it did not meet the deadline.

Further, Qwest argued that Sprint has not met the requirements for a variance.² Sprint has not demonstrated that the rule imposes an excessive burden upon it. Rather, Sprint just asserts that the conditions today are the same as those of three years ago and vaguely references the obstacles of regulatory uncertainty and difficult economic conditions. Qwest argued that these affect every participant in the telecommunications market and Sprint failed to show how it specifically faces an excessive burden by complying with the rule. Qwest also argued that granting the variance would conflict with standards imposed by law because Sprint has not met the requirements set forth by Minn. Rules Part 7812.0200, subp. 5 for an extension.

IV. DOC's Position

The DOC recommended that Sprint's request for a variance be granted for a three year extension of time in which to serve all customers in its authorized territory.

The DOC argued that the transition to a fully competitive local market is taking longer than anticipated, thus delaying the ability of companies to enter into all geographic areas in which certification was originally sought. Sprint's seeking an extension of time indicates its continuing interest in serving throughout its certificated territory. For this reason, the DOC argued, there was no purpose in revoking Sprint's authority in exchanges in which it is not currently serving. Further, granting the variance is consistent with the public interest goal of enhancing local competition.

Finally, Sprint only provides local service to residential customers as a competitive local exchange carrier (CLEC). Varying the rules would grant Sprint additional time to serve business customers, who generally have more competitive options than do residential customers.

V. Commission Action

Under Minn. Rules 7829.3200 the Commission may grant a variance to any of its rules upon making the following findings:

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

The Commission concurs with Sprint and the DOC that these standards have been met and that these variances should be granted. The Commission will grant Sprint a variance of Minn. Rules part 7812.0200, subp. 4 and Minn. Rules 7812.0600 for a three-year extension of time to meet its service obligations in its authorized service territory.

² See Minn. Rules Part 7829.3200.

The Commission recognizes that factors beyond the control of Sprint, such as difficult economic conditions and regulatory uncertainty, have contributed to the delay in development of local competition.

The Commission finds that to revoke Sprint's authority at this time would not only harm the residential customers currently being served by Sprint, but impose an excessive burden on Sprint.

The Commission finds that granting these variances would not adversely affect the public interest and would in fact serve the public interest by allowing additional time to promote competition.

Finally, the Commission finds that granting these variances would not conflict with any standards imposed by law.

The Commission will therefore grant the variances.

ORDER

1. Sprint is hereby granted a variance of Minn. Rules 7812.0200, subp. 4 and Minn. Rules 7812.0600 for a three-year extension of time in which to serve all customers in its authorized service territory.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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