

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Application of Qwest Communications Corporation to Amend its Certificate of Authority to Provide Facilities-Based and Resold Local Service

ISSUE DATE: December 11, 2003

DOCKET NO. P-5096/M-03-1401

ORDER GRANTING APPLICATION
SUBJECT TO CONDITIONS AND SETTING
OPERATIONAL REQUIREMENTS

PROCEDURAL HISTORY

On October 13, 1999, this Commission granted Qwest Communications Corporation (QCC) a conditional certificate of authority under Minn. Stat. § 237.16, subd. 1 to provide facilities-based and resold telecommunications service in all Minnesota telephone exchanges served by GTE Minnesota or by US WEST Communications, now Qwest Corporation.¹ QCC is an affiliate of Qwest Corporation, an incumbent local exchange carrier and a Regional Bell Operating Company serving over half the land lines in this state.

On September 2, 2003, QCC filed an application to amend its certificate of authority to include all exchanges served by Frontier Communications of Minnesota; Sprint Minnesota, Inc.; Sherburne County Rural Telephone Company; Integra Telecom of Minnesota, Inc.; Sleepy Eye Telephone Company; TDS-Arvig Telephone Company; Bridge Water Telephone Company; East Otter Tail Telephone Company; Hutchinson Telephone Company; Lakedale Telephone Company; Mankato Citizens Telephone Company d/b/a HickoryTech; and Mid-Communications.

On September 17, 2003, the Department of Commerce (the Department) filed initial comments on the application. The Department recommended granting the application on condition that QCC not provide service in any new exchange until it had submitted and the Commission had approved

¹ *In the Matter of an Application of Qwest Communications Corporation for a Certificate of Authority to Provide Long Distance, Local Niche and Facilities-Based and Resold Local Exchange Services*, Docket No. P-5096/NA-99-939, summary order dated October 13, 1999.

three documents: (1) a 911 plan for that exchange; (2) an interconnection agreement with the incumbent local exchange carrier serving that exchange; and (3) tariffs for the new service. The Department also recommended requiring Qwest to amend its 911 Agreement with the state and local public safety jurisdictions under Minn. Stat. § 403.01 to reflect the expansion of its service territory.

On September 22, 2003, nine of the incumbent local exchange carriers affected by the application filed an objection to it, preventing the application's automatic approval under Minn. Stat. § 237.16, subd. 4. The objecting carriers were Arvig Telephone Company, Bridge Water Telephone Company, East Otter Tail Telephone Company, Hutchinson Telephone Company, Lakedale Telephone Company, Mankato Citizens Telephone Company, Mid-Communications, Sherburne County Rural Telephone Company, and Sleepy Eye Telephone Company.

The objecting carriers opposed the application on grounds that if QCC used certain Qwest network facilities to terminate traffic in the new exchanges, it would exacerbate existing problems in identifying originating carriers for purposes of billing access charges and reciprocal compensation fees.

On October 29, 2003, the Department filed supplemental comments stating, among other things, that it had conducted discovery and determined that QCC would not be using Feature Group C technology, the technology causing the carrier identification problems cited by the objecting carriers, in the new exchanges. The Department continued to recommend approving the application with the conditions cited in its initial comments.

On November 18, 2003, the objecting carriers filed a response to the Department's supplemental comments, asking the Commission to condition approval of the application on two requirements: (1) that QCC not use Feature Group C technology in serving the new exchanges; and (2) that QCC pass along all originating call information that it handles, to facilitate proper billing of access charges and reciprocal compensation fees.

On December 4, 2003, the application came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Legal Standard

Under Minn. Stat. § 237.16, subd. 1, the Commission is to grant certificates of authority to provide local telecommunications service to applicants who have demonstrated that they possess the technical, managerial, and financial resources to provide the proposed service under terms and conditions the Commission finds to be consistent with fair and reasonable competition, with universal service, with Commission rules, and with the provision of affordable telephone service at a quality consistent with Commission rules.

Once applicants have been granted authority under Minn. Stat. § 237.16, subd. 1, subsequent applications to expand their service areas are considered approved unless the Commission or an interested party raises an objection within 20 days. Minn. Stat. § 237.16, subd. 4. An objection must explain why the proposed service area expansion is inconsistent with the public interest.² An objection shifts to the applicant the burden of proving that it has the technical, managerial, and financial resources to provide local service in the new exchanges consistent with the requirements of Minnesota law.³

II. Commission Action

The Commission concurs with the applicant and the Department that QCC has the technical, managerial, and financial resources to provide local service meeting the requirements of Minnesota statutes and Commission rules in the new exchanges. QCC has previously demonstrated this capacity for its original service area, and there is nothing in the record to suggest that the proposed expansion would strain its resources to the point of jeopardizing service consistent with Minnesota law.

The Commission concurs with the Department that approval of the expansion should be conditioned upon QCC's compliance with 911, interconnection agreement, and tariff filing requirements. The Company has indicated its agreement and its intention to meet these requirements.

Further, the Commission concurs with the objecting carriers that approval of the expansion should be conditioned upon QCC not using Feature Group C technology to serve the new exchanges and upon QCC passing along originating call information to facilitate proper billing of access charges and reciprocal compensation fees. Fair competition requires clear, effective, and efficient procedures for identifying the originating carriers of traffic transported by competitors' facilities.

While its discovery responses indicate that QCC does not have plans to use Feature Group C technology in serving the new exchanges, placing clear conditions on the amended certificate is a reasonable precaution, given QCC's close operational relationship with Qwest, which does use the potentially problematic technology. Placing clear conditions on the amended certificate is also an effective means of promoting the regulatory certainty on which robust competition depends.

Finally, the Commission rejects QCC's claim that it is inappropriate to attach situation-specific conditions to this service territory expansion. The local certification statute anticipates that the Commission will conduct an individualized examination of each application for local authority and will "prescribe the terms and conditions upon which construction or service delivery may be

² Minn. Rules 7811.0300, subp. 5; Minn. Rules 7812.0300, subp. 5.

³ Minn. Rules 7811.0300, subp. 5; Minn. Rules 7812.0300, subp. 5.

carried on”⁴ and will issue a certificate of authority “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.”⁵

In this case, those terms and conditions include a prohibition against the use of Feature Group C technology and a requirement to pass along all originating call information that QCC handles, to facilitate proper billing of access charges and reciprocal compensation fees.

The Commission will so order.

ORDER

1. The Commission hereby grants QCC’s request to amend its certificate of authority, subject to the condition that QCC not provide service in any exchange until it has met the following conditions for that exchange:
 - (A) Commission approval of a QCC 911 plan for the exchange;
 - (B) Commission approval of an interconnection agreement with the incumbent carrier serving the exchange;
 - (C) Commission approval of tariffs for service rendered in the exchange;
 - (D) QCC’s amendment of its 911 Agreement with the state and the relevant local public safety jurisdictions under Minn. Stat. Chapter 403; and
 - (E) QCC’s execution of exchange of traffic agreements with incumbent local exchange carriers serving adjoining exchanges through Extended Area Service, to implement QCC’s extended calling plan.
2. QCC shall not use Feature Group C technology to serve the exchanges this Order authorizes it to serve.
3. QCC shall pass along all originating call information that it handles, to facilitate proper billing of access charges and reciprocal compensation fees.

⁴ Minn. Stat. § 237.16, subd. 1 (a) (1).

⁵ Minn. Stat. § 237.16, subd. 1 (b).

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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