

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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Commissioner

In the Matter of Proposed Merger of Sprint
Corp. and Nextel Communications, Inc.

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DOCKET NO. PT-6200/PA-05-332

ORDER DECLINING JURISDICTION

PROCEDURAL HISTORY

On February 18, 2005, Sprint Corp. (Sprint) notified the Commission of its intention to merge with Nextel Communications, Inc. (Nextel). Sprint argued that no Commission approval would be required for this transaction, but asked the Commission to state if it reached a contrary conclusion.

On March 31, 2005, the Department concurred in Sprint's conclusion that the transaction did not warrant Commission action. No other party commented on the proposed merger.

The matter came before the Commission on May 17, 2005.

FINDINGS AND CONCLUSIONS

I. The Merger

Sprint, a multi-state firm operating both telephone companies and wireless service providers (called "radio common carriers" in statute¹), proposes to exchange stock with Nextel, a wireless service provider, merging the entities. Sprint asserts that the merger would not change the operations of any service provider in Minnesota or the control of any Minnesota telephone company. And Sprint states that the Commission lacks jurisdiction over the wireless operations of either Sprint or Nextel.

Sprint also declares its intention, in the future, to separate its local telephone company operations from the combined Sprint/Nextel wireless operations and to seek Commission review of that transaction. But that transaction is not presently at issue.

¹ Minn. Stat. § 237.01, subd. 4.

II. Department Comments

The Department compares this case to a corporate reorganization, which generally does not require Commission approval.² Because Sprint would retain majority control of the merged entity, the Department recommends that the Commission decline to act on the proposed merger.

III. Commission Action

Two Minnesota statutes govern telecommunications mergers, § 237.23 and § 237.74, subdivision 12. The Commission will address them in turn.

Section 237.23 states:

Acquiring property of another company. It shall be unlawful for any telephone company, corporation, person, partnership, or association subject to the provisions of this chapter to purchase or acquire the property, capital stock, bonds, securities, or other obligations, or the franchises, rights, privileges, and immunities of any telephone company doing business within the state without first obtaining the consent of the commission thereto; and telephone companies, corporations, persons, partnerships, or associations are hereby given the right with the consent of the commission to purchase and acquire the property, capital stock, bonds, securities, or other obligations together with all franchises, rights, privileges, and immunities owned or enjoyed by said companies. The owner and the proposed purchaser of said property shall both join in the application filed with the commission for the approval of such transfer, and in the case of a corporation desiring to sell all of its property it shall require a vote of a majority of its stockholders to ratify the same. Telephone companies may sell and dispose of any property not used by said telephone companies in the conduct of their business at the time of the sale without the consent of the commission.

Nothing herein shall be deemed to prevent the holding of stock heretofore lawfully acquired or to prevent the acquisition of additional stock by any telephone company owning a majority of the stock of any telephone company.

In short, § 237.23 prohibits any entity subject to Minnesota Statutes Chapter 237 from acquiring assets of a Minnesota telephone company without Commission approval. This statute does not apply to Sprint's acquisition of Nextel's stock because Nextel is a wireless provider, not a "telephone company" as that term is defined in Chapter 237.³

Section 237.74, subdivision 12, states:

² See, for example, *In the Matter of the Application for Approval of a Corporate Reorganization by Winstar Wireless, Inc.*, Docket No. P-5246/PA-00-925 (August 25, 2000).

³ Minn. Stat. § 237.01, subd. 7.

Certification requirement. No telecommunications carrier shall construct or operate any line, plant, or system, or any extension of it, or acquire ownership or control of it, either directly or indirectly, without first obtaining from the commission a determination that the present or future public convenience and necessity require or will require the construction, operation, or acquisition, and a new certificate of territorial authority. Nothing in this subdivision requires a telecommunications carrier that has been certified by the commission to provide telephone service before August 1, 1993, to be recertified under this subdivision. Nothing in this subdivision shall be construed to allow or prohibit facilities bypass of the local exchange telephone company, nor shall it be construed to prohibit the commission from issuing orders concerning facilities bypass of the local exchange telephone company.

Here no Commission action is warranted because the line, plant, and system being acquired by Sprint pertain exclusively to activities that conform to the definition of a radio common carrier, and are therefore beyond the scope of Chapter 237 merger review.⁴

Finding no basis to rule on the proposed merger, the Commission will decline to do so.

ORDER

1. Sprint Corp.'s proposed merger with Nextel Communications, Inc., does not require Commission approval.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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⁴ “[N]one of chapter 237 applies to telephone company activities which conform to the definition of a radio common carrier.” Minn. Stat. § 237.01, subd. 7. But the Legislature authorizes the Commission to assess wireless providers to finance programs. See, for example, Minn. Stat. § 237.16, subd. 9.