

Decision No. R97-493

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-288T

IN THE MATTER OF THE COMBINED APPLICATION OF SPRINT COMMUNICATIONS COMPANY, L.P., FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND FOR SPECIFIC FORMS OF PRICE REGULATION.

RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
GRANTING: (1) A CERTIFICATE TO
PROVIDE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES;
(2) NOTICE OF INTENT TO
EXERCISE OPERATING AUTHORITY;
AND (3) A CERTIFICATE OF
PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES

Mailed Date: May 14, 1997

I. STATEMENT

A. This application was filed on June 26, 1996 by Applicant Sprint Communications Company, L.P. ("Sprint"). The Commission gave notice of the application on July 2, 1996. U S WEST Communications, Inc. ("U S WEST"), filed its Notice of Intervention on July 30, 1996. Staff filed its intervention on August 12, 1996.

B. The matter was originally scheduled for a hearing to be held on October 1, 1996. By Decision No. R96-1012-I, September 19, 1996, the procedural schedule in this matter was

suspended and the hearing continued at the request of Sprint. This was due to the arbitration proceedings that Sprint was participating in during this same period of time. As part of the procedural suspension, Sprint waived the 210-day statutory period for a Commission decision under § 40-6-109.5, C.R.S.

C. As a condition of the suspension of the procedural schedule, Sprint was ordered to file monthly status reports. Sprint periodically filed status reports indicating that negotiations were continuing and would ultimately prove fruitful concerning a stipulated resolution.

D. On March 7, 1997, Staff of the Commission filed its Motion to Approve Stipulation, to Vacate Hearing, and to Waive Response Time. Attached to this motion was a stipulation executed by all the parties to this proceeding. By Decision No. R97-254-I, March 12, 1997, the motion was denied. Specifically, the stipulation was objectionable in two main ways. First, the stipulation contained a provision which stated as follows:

For the limited purposes of this agreement for the provision of Part 3 services and until further order of the Commission, Sprint is not required to provide the Commission with a cost allocation manual.

It was stated in the decision rejecting the stipulation that there were no grounds and no support which would indicate why Sprint does not or should not be required to have a cost allocation manual approved for its Part 3 services.

E. Second, the stipulation was rejected because of the attempt to incorporate "all applicable requirements" set forth in two Commission decisions and a stipulation which is incorporated into one of those decisions. It was unclear what "all applicable requirements" would actually mean, and whether certain conditions would be applicable to Sprint which were also applicable to the Applicant in those other decisions.

F. On May 9, 1997, Staff of the Commission filed its Motion to Reconsider. Attached to the motion to reconsider is a revised stipulation. The revised stipulation specifically spells out all the requirements applicable to Sprint rather than attempting to incorporate the requirements by reference from other Commission decisions. This adequately addresses the concerns that were expressed in Decision No. R97-254-I.

G. In the stipulation the parties agree that Sprint has the technical, financial, and managerial fitness to provide local exchange telecommunications services for the entire State of Colorado, and request that Sprint be granted a certificate to reflect that. The stipulation further suggests that the Commission grant the Notice of Intention to Exercise Operating Authority for all areas currently served by U S. Together Sprint will have a certificate of public convenience and necessity to provide local exchange telecommunications services in all current local calling areas served by U S WEST.

H. Sprint has withdrawn its request for specific forms of price regulation at this time. However, Sprint is not precluded from seeking any specific form of price regulation in the future.

I. The stipulation notes that Sprint will be required to participate in the Colorado High Cost Fund, Low Income Telephone Assistance Fund, and the Colorado Disabled Telephone Users Fund. Sprint acknowledges that it will be required to pay fees to the State of Colorado to defray administrative expenses of the Commission for the supervision and regulation of public utilities. Sprint specifically agrees to use the Uniform System of Accounts of the Federal Communications Commission, 47 CFR Part 32 as its regulated system of accounts until such time as it is granted authority by the Commission to use a substitute accounting system utilizing Generally Accepted Accounting Principles.

J. Sprint also agrees in the stipulation to file appropriate tariffs with the Commission at least 30 days prior to the date it proposes to commence provision of local exchange telecommunications services in Colorado. Sprint agrees to comply with the Commission's Rules Prescribing Principles for Costing and Pricing of Regulated Services of Telecommunications Providers, 4 *Code of Colorado Regulations* ("CCR") 723-30 and comply with the Cost Allocation Rules for Telecommunications Service Providers and Telephone Utilities, 4 CCR 723-27.

K. Sprint agrees not to unjustly discriminate among and between consumers in the provision of local exchange telecommuni-

cations services. It will serve all customers in its service territory on a non-discriminatory basis, *i.e.*, Sprint will not refuse service to a qualified customer who has the ability to pay for such service. Sprint will not be required to serve customers where the underlying facilities-based provider has no facilities. Where Sprint's local exchange telecommunications service is provided on a facilities-based basis, Sprint shall have the obligation to serve all customers in its service territory on a non-discriminatory basis only in areas in which it has such facilities. However, Sprint shall not be required to extend service to customers where the underlying facilities-based provider has no facilities. For areas in which Sprint provides service on both a resale and a facilities-based basis, Sprint shall not be required to extend facilities to meet a customer, but where Sprint has facilities or can provision the service on a resale basis, Sprint shall provide service to all qualified customers on a non-discriminatory basis.

L. The stipulation maintains a provision, slightly modified, concerning a waiver of the obligation of Sprint to file a cost allocation manual. Specifically, paragraph 7 of the stipulation states as follows:

Unless and until the Commission orders otherwise, Sprint is temporarily not required to provide the Commission with a cost allocation manual. This temporary waiver of the Commission rules is for one year, or until the Commission adopts new rules for the fully competitive local exchange telecommunications market in Docket No. 97R-177T, whichever occurs later.

In the Motion to Reconsider, Staff notes that the Commission has granted a similar waiver to a competing local exchange service provider, MCImetro Access Transmission Services, Inc. ("MCImetro"), in Decision No. C97-4 in Docket No. 96A-267T. Staff also notes that the Commission has opened Docket No. 97R-177T, which is a rulemaking docket which will consider rewriting the Commission rules so that they are relevant and applicable for a fully competitive local exchange telecommunications services market. One of the issues to be considered in that proceeding is the necessity of filing a cost allocation manual. On the basis of the foregoing, Staff suggests that a temporary waiver of one year, or until the new rules are adopted by the Commission, is appropriate for Sprint.

M. While it is true that MCImetro was granted an indefinite waiver of the requirement to file a cost allocation manual, MCImetro is in a different position from Sprint. The administrative law judge ("ALJ") takes notice that MCImetro is a newly-formed company which offers primarily local exchange telecommunications services, few deregulated services, and limited Part 3 services. Sprint provides many more services than this. See generally the Application and Exhibits 7 and 8 to the Application. However, the Motion to Reconsider will be granted and the stipulation accepted with this clarification: the waiver of the requirement to file a cost allocation manual applies only to the authority which is granted in this proceeding. It does

not alter Sprint's obligation which currently exists with respect to services Sprint already provides.

N. Based upon the above clarification, the proposed stipulation is consistent with the application as filed and noticed and is consistent with the legislative statements of policy contained in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S. Sprint has the technical, financial, and managerial fitness to provide local exchange telecommunications services in Colorado. Granting this application would promote competition in the market for local exchange telecommunications services. The Motion to Reconsider should be granted and the stipulation accepted.

O. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Sprint Communications Company, L.P., is granted a certificate to provide local exchange telecommunications services through resale of service, unbundled elements, leased or owned facilities, or any combination thereof, throughout the State of Colorado. Sprint Communications Company, L.P.'s Notice of Intention to Exercise Operating Authority is granted for all areas currently served by U S WEST Communications, Inc. Thus Sprint Communications Company, L.P., is granted a certificate of public convenience and necessity to provide local exchange telecommunications services through resale of services, unbundled elements,

leased or owned facilities, or any combination thereof, in all current local calling areas served by U S WEST Communications, Inc.

2. Sprint Communications Company, L.P. shall serve all customers in its service territory on a non-discriminatory basis. Specifically, Sprint Communications Company, L.P. shall not be allowed to refuse service to a qualified customer, that is, a customer that has the ability to pay for the service.

3. The stipulation filed May 8, 1997 is incorporated into this Order as if fully set forth.

4. Sprint Communications Company, L.P. shall use the Uniform System of Accounts of the Federal Communications Commission, 47 CFR Part 32, as its regulated system of accounts until further order of the Commission.

5. Sprint Communications Company, L.P. shall not be eligible for the exemption for providers with less than 50,000 access lines found at 4 *Code of Colorado Regulations* 723-30-7(1).

6. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

7. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

8. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Administrative Law Judge

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