

DOCKET NO. 24480

COMPLAINT OF METROMEDIA
FIBER NETWORK SERVICES, INC.
AGAINST THE CITY OF
CARROLLTON, TEXAS UNDER THE
PUBLIC UTILITY REGULATORY ACT
AND HB 1777

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PUBLIC UTILITY COMMISSION
OF TEXAS

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PUBLIC UTILITY COMMISSION
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ORDER ON CERTIFIED ISSUE

This Order concludes that a holder of an SPCOA providing nonswitched telecommunications services is a certificated telecommunications provider under Chapter 283 of the TEX. LOC. GOV'T CODE to the extent the SPCOA holder is certificated by the Commission to offer local exchange telephone service. In addition, pursuant to P.U.C. PROC. R. 22.5(b), the Commission granted a good cause exception to the procedural deadline for issuance of the Order on Certified Issue until September 28, 2001.

I. Procedural History

On August 6, 2001, Metromedia Fiber Network Services, Inc. (MFN) filed a complaint against the City of Carrollton, Texas (City) asserting that the City's refusal to issue permits to MFN until it executed a license agreement obligating MFN to pay non-statutory annual fees to the City for use of rights-of-way (ROWS) violated Chapter 283¹ and federal law. MFN requested that the Commission issue an emergency order requiring the City to accept MFN's application for a construction permit and issue a permit to MFN within five business days, and show cause why the City should not be compelled to comply with Chapter 283.²

¹ TEX. LOC. GOV'T CODE ANN. §§ 283.001-.058 (Vernon Supp. 2001) (Chapter 283).

² Complaint of MFN at 3 (Aug. 6, 2001).

The administrative law judge (ALJ) denied MFN's request for emergency relief indicating that it would be premature for the Commission to grant MFN's requested relief before the Commission considered the relevant threshold legal/policy issue.³ The ALJ additionally certified an issue for Commission determination.⁴ On August 22, 2001, a motion to intervene was filed by the Coalition of Cities (Coalition).⁵

The City, the Coalition, Commission Staff and MFN submitted briefs on the certified issue. In addition, the City of Plano, Texas; McLeodUSA Telecommunications Services, Inc.; the CLEC Coalition;⁶ the Texas Coalition of Cities For Utility Issues; the City of Houston; El Paso Networks, L.L.C.; and the Texas Municipal League and the Texas City Attorneys Association all filed *amicus curiae* briefs.⁷

II. Discussion

The ALJ certified the following issue to the Commission pursuant to P.U.C. PROC. R. 22.127:

“Is a holder of an SPCOA providing nonswitched telecommunications services a certified telecommunications provider (CTP) within the meaning of TEX. LOC. GOV'T CODE ch. 283?”

³ Order No. 2 at 2 (Aug. 16, 2001).

⁴ Order No. 3 (Aug. 20, 2001).

⁵ The Coalition of Cities includes the cities of Addison, Austin, Bedford, Colleyville, Farmers Branch, Grapevine, Hurst, Keller, Missouri City, North Richland Hills, Pasadena, Tyler, Westlake, West University Place, Wharton, and El Paso. (Coalition).

⁶ For purposes of its briefing, the CLEC Coalition includes: El Paso Networks, L.L.C.; e.spire Communications, Inc., Global Crossing Local Services, Inc., Level 3 Communications, L.L.C., and Time Warner Telecom of Texas, L.P.. (CLEC Coalition).

⁷ At the prehearing conference, the ALJ indicated that the Commission would entertain *amicus briefs* on this certified issue. Order No. 3, n. 1 (Aug. 20, 2001).

MFN asserted it is a certificated telecommunications provider (CTP) within the meaning of Chapter 283 as evidenced by its Service Provider Certificate of Operating Authority (SPCOA) granted by the Commission.⁸ MFN argued that a carrier certificated by the Commission through issuance of an SPCOA, Certificate of Operating Authority (COA), or Certificate of Convenience and Necessity (CCN) need not provide local exchange telephone service (LETS) at a particular time in order to be entitled to the benefits and protections afforded to a CTP under Chapter 283. Accordingly, MFN claimed a municipality may not deny a request for a construction permit by a CTP nor demand the CTP enter into a license agreement and pay any compensation other than the access line fees contemplated by Chapter 283 solely because the CTP does not provide LETS.

Commission Staff took a similar position as MFN, but added that an SPCOA holder providing only nonswitched telecommunications services is a CTP within the meaning of Chapter 283 *as long as its SPCOA does not exclude the authority to provide LETS*. Staff explained that, though an SPCOA authorizes the holder to offer LETS, neither PURA⁹ nor Commission rules expressly requires an SPCOA holder to offer LETS. Furthermore, Staff asserted that neither PURA, Commission rules, nor Chapter 283 expressly denies an SPCOA holder the benefits and obligations of an SPCOA based on whether the SPCOA holder offers LETS at a particular time.

⁸ SPCOA 60220 was originally granted to Communications Systems Development, Inc. (CSD) in Docket No. 19957 on January 12, 1999. On June 12, 2000, CSD filed an application to amend SPCOA 60220 transferring ownership and control to MFN. MFN's SPCOA was approved in *Application of Communications Systems Development, Inc. for an Amendment to its Service Provider Certificate of Operating Authority*, Docket No. 22658 (July 24, 2000).

⁹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 11.001-64.158 (Vernon 1998 & Supp. 2001) (PURA).

The City of Carrollton asserted that MFN's service offerings do not place it within the parameters of Chapter 283, and therefore, MFN must comply with the City's requirement that it pay a fee for the use of the public ROW in the city, as set forth in the city's ordinance. The City argued that the services offered by MFN through the use of the City's ROW do not constitute LETS. The City's argument is based on the assertion that the LETS referenced in Chapter 283 has the same meaning assigned by PURA, which expressly excludes private line or virtual private line services, dark fiber services, and/or non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service.¹⁰ Thus, the City asserted that since MFN offers only non-switched voice and data services, but no local exchange services, MFN does not meet the statutory definitions contained within Chapter 283 or PURA and must pay an alternate fee for ROW use.¹¹

Chapter 283¹² defines a CTP as "a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service." An SPCOA holder is authorized, via its certificate, to offer LETS as well as other telecommunications services unless the certificate is restricted to specifically exclude LETS. Thus, satisfying the definition of CTP in Chapter 283 requires only that a person is a certificate holder with the authority to provide LETS and not upon the actual provision of services by a certificate holder as the City contended. Consequently, the City's argument that MFN does not currently offer LETS is irrelevant to this issue because MFN possesses the authority to offer LETS by virtue of its

¹⁰ PURA § 51.002(5).

¹¹ The City of Carrollton's Brief on Certified Question at 2-3 (Sept. 4, 2001).

¹² TEX. LOC. GOV'T CODE § 283.002(2).

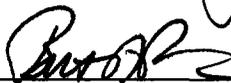
SPCOA. Accordingly, the Commission concludes that an SPCOA holder providing nonswitched telecommunications services is a CTP within the meaning of Chapter 283 of the TEX. LOC. GOV'T CODE to the extent the SPCOA holder is certificated to offer local exchange telephone service.

SIGNED AT AUSTIN, TEXAS the 28th day of September 2001.

PUBLIC UTILITY COMMISSION OF TEXAS



MAX YZAGUIRRE, CHAIRMAN



BRETT A. PERLMAN, COMMISSIONER



REBECCA KLEIN, COMMISSIONER