

ALJ/K.H/cac

Decision 89 08 033 AUG 3 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of US Sprint)	
Communications Company, Limited)	
Partnership (U-5112-C), under)	
Rule 15 for approval to provide)	Application 89-04-025
intrastate interLATA and incidental)	(Filed April 12, 1989)
intrastate intraLATA VPN SM service)	
in California.)	

INTERIM OPINION

By this decision, the Commission authorizes US Sprint Communications Company Limited Partnership (US Sprint) to provide its VPNSM service on an intrastate interLATA basis, pending final resolution of the application filed by US Sprint in this docket. In addition, US Sprint is granted interim authority for incidental intrastate intraLATA VPNSM service on a limited basis to permit VPNSM customers access to a strictly limited set of telephone numbers which address the customers' computer data bases and internal operating systems. Other restrictions, such as holding out restrictions and reporting requirements are also imposed. The tariff schedules authorized by this interim opinion will be effective only until broader authority is subsequently granted, or alternatively, will remain effective for 18 months after US Sprint's application is effectively denied.

Background

On April 12, 1989, US Sprint filed Application (A.) 89-04-025 requesting authority to provide intrastate interLATA and incidental intrastate intraLATA VPNSM service in California. US Sprint's VPNSM service is a virtual private network service designed to meet the interstate calling needs of large, geographically dispersed corporate users. US Sprint filed concurrently a motion for interim authority to provide

VPNSM service on an interim basis while the Commission is considering the application. US Sprint has offered this service on an interstate basis since August 1, 1986 following approval of its Tariff F.C.C. No. 5 by the Federal Communications Commission.

The Commission has granted similar interim authority to both MCI Telecommunications (MCI) and AT&T Communications of California, Inc. (AT&T-C) for their virtual private network services.

In A.85-05-081, AT&T-C requested limited authority to provide incidental intraLATA service in connection with its Software Defined Network (SDN) service, a virtual private network service similar to US Sprint's VPNSM. In D.85-10-015 and D.86-05-046, the Commission authorized AT&T-C to provide SDN service to two customers on an interim basis pending resolution of AT&T-C's application. Those two decisions required that the customers voluntarily limit use of the service to interLATA communications, and further provided that customer payments for SDN service would be subject to refund to the extent rates subsequently approved might be lower than those in the interim tariffs and that AT&T-C's access charge payments to Pacific Bell (Pacific) would also be subject to retroactive adjustment to reflect any increase in such charges required by subsequent order.

In D.86-05-073 the Commission granted AT&T-C authority to provide its SDN service on a limited intraLATA basis to permit SDN customers access to a strictly limited set of telephone numbers which address the customers' computer data bases and internal operating systems. AT&T-C was required to use Far End Network (FEN) screening to block off-net intraLATA calls to 10-digit conventional numbers. The Commission stated that a decision on whether to require permanent total blocking would be made after further experience with SDN usage patterns.

AT&T-C was also required, in the course of working with any customer on the design of its SDN service, to fully and

effectively inform the customer that local exchange carrier (LEC) facilities are to be used for all intraLATA calling except for the authorized intraLATA purposes and that any other intraLATA use of the SDN service is unlawful. AT&T-C was also required to submit monthly reports to LECs to enable them to bill AT&T-C properly for intrastate access services, and two semiannual reports to the Commission Advisory and Compliance Division (CACD): one regarding usage of SDN service and its impacts on other services, and another regarding intrastate revenues and costs from SDN services.

Concurrently with D.86-05-073, the Commission issued I.86-05-036 in order to evaluate the potential intraLATA market for virtual private network services and to address the appropriateness of regulations such as blocking and reporting requirements. Telephone corporations were required to file responses indicating their plans for virtual private network services in California and their recommendations regarding regulatory requirements. No decision has been issued in that investigation to date.

In A.87-09-027, MCI obtained interim authority from the Commission to provide its virtual private network service, Vnet (D.87-11-064, and extended to more customers in D.88-07-034). The Commission likewise imposed several conditions on MCI's offering of Vnet, but did not require FEN screening as it had for AT&T-C's SDN service because MCI did not have the technical capability to do so. By imposing certain conditions on MCI's Vnet service, the Commission intended to preclude incidental intraLATA use other than that expressly authorized for a strictly limited set of telephone numbers which address customers' computer data bases and internal operating systems. The Commission imposed the following holding out restrictions, requiring MCI to fully and effectively inform its Vnet customers that: (1) LEC facilities are to be used for all intraLATA purposes; (2) use of the Vnet service for other intraLATA calling is unlawful; (3) the Vnet tariff requires that customers take all reasonable steps to insure that Vnet is not used to make

unauthorized intraLATA calls pending a final decision in MCI's A.87-09-027; (4) intraLATA calling should be routed to LECs as appropriate through the programming of the customer's PBX switch or arranging of Centrex route guides; and (5) MCI and/or the LEC will work with the customer in implementing appropriate routing. (Ordering Paragraph 3, D.87-11-064.)

Additionally, the Commission imposed certain reporting requirements on MCI to provide information to CACD and the LECs to allow tracking of its Vnet service activity. MCI was ordered to: (1) advise Pacific and other LECs of customers in California to which MCI supplies Vnet service, subject to appropriate proprietary agreements; (2) provide monthly reports to the LECs within whose service territories Vnet service is provided, furnishing the recorded Vnet usage originating and terminating within that service area, the applicable intrastate/interstate breakdown, and if available, a breakdown of the recorded usage between that portion which uses LEC access facilities and that which does not; and (3) provide reports within 30 days of installing Vnet service to CACD describing how each customer's PBX or other switching equipment has been programmed to route intraLATA traffic to the LEC, as well as other MCI efforts to comply with the restrictions on intraLATA Vnet use. (Ordering Paragraph 4, D.87-11-064.)

Finally, the Commission deferred further action both on MCI's application (A.87-09-027) and the Commission's investigation into virtual private network services (I.86-05-036) until after Phase I of the local exchange investigation was complete.¹

¹ Since the issuance of D.87-11-064, the issue of intraLATA competition, including that for virtual private network services, has been deferred to Phase III of I.87-11-033.

The above detail has been provided regarding MCI's Vnet service because US Sprint is requesting identical treatment in its motion for interim authority.

Protests to US Sprint's application were filed by Pacific and GTE of California, Inc. (GTEC) with comments filed by the Division of Ratepayer Advocates (DRA), all of which will be summarized below.

US Sprint Motion for Interim Authority

By its motion, US Sprint is requesting the same interim authority to offer its virtual private network service (VPNSM) as the Commission has previously granted to AT&T-C and MCI. US Sprint asserts that approval of its request for interim authority will benefit California intraLATA service customers through the increased competition for intrastate virtual private network service resulting from US Sprint's entrance into this market. US Sprint argues that rejection of its motion will competitively disadvantage US Sprint in marketing its VPNSM service on an interstate basis relative to AT&T-C and MCI, since the Commission has already granted AT&T-C and MCI interim authority for their virtual private network services, SDN and Vnet, respectively.

US Sprint claims it cannot block the completion of incidental intraLATA calling on its VPNSM service networks, which are designed for interstate and intrastate interLATA calling without significant modification of its interstate network. Since the Commission has previously found that issues related to intraLATA competition will be addressed in Phase III of I.87-11-033, US Sprint urges that all issues of blocking should be deferred to that proceeding. US Sprint agrees to follow the interim operating conditions imposed on MCI, which specify marketing restrictions, customers notice and service monitoring reports, pending a final decision on its application. US Sprint believes these operating conditions will insure that intraLATA use of VPNSM services will be minimal.

DRA's Comments

DRA favors approval of US Sprint's request for interim authority under the same terms and conditions that the Commission imposed on MCI in D.87-11-064 and D.88-07-034. DRA agrees that to delay US Sprint's request for interim authority would place US Sprint at a competitive disadvantage vis-a-vis AT&T-C and MCI. DRA acknowledges that US Sprint does not have the technical capability at this time to screen some intraLATA traffic as does AT&T-C through its FEN screening process.

While not opposing US Sprint's request for interim authority, DRA is concerned about the erosion of intraLATA revenues from competition from virtual private networks statewide. DRA asserts that the tracking reports filed by AT&T-C and MCI indicate that between 15 to 20% of the intrastate traffic being carried on AT&T-C's and MCI's virtual private network is actually intraLATA. DRA believes Phase III of I.87-11-033, the designated forum to resolve intraLATA competition issues, will be a protracted proceeding which may not be complete in 1990. Because of its view of the timing of Phase III, DRA states it plans to petition the Commission to reopen I.86-05-036, the Commission investigation into intraLATA virtual private network services, in the near future to explore the diversion of existing intraLATA traffic to virtual private networks.

Pacific's Protest

On May 24, 1989, Pacific filed a motion to accept late-filed protest and response to motion for interim authority. As of the date the protest was due, Pacific and US Sprint were still discussing Pacific's concerns about the completion of intraLATA call's over US Sprint's VPNSM service. US Sprint agreed to the extension of time for Pacific to file its protest and response to the motion for interim authority and so notified the assigned administrative law judge (ALJ) by telephone.

Pacific does not object to approval of interim authority for US Sprint's VPNSM service so long as the same conditions placed on MCI's Vnet service are applicable. In discussions with US Sprint, Pacific learned that US Sprint does not currently have the capability to report usage on a customer-specific level at this time. Based on US Sprint's assurance that it will modify its system to allow customer specific reporting within 90 days so that Pacific and the Commission can adequately monitor whether a specific VPNSM customer is observing the prohibition on intraLATA use, Pacific does not oppose interim authority. Finally, Pacific agrees that any final action on US Sprint's application should be deferred until after the issue of intraLATA competition has been addressed in Phase III of I.87-11-033 (new regulatory framework proceedings).

GTEC's Protest

On May 30, 1989, GTEC filed a motion for authority to file a late-filed protest. GTEC represents that US Sprint does not object to acceptance of the late protest.

GTEC does not oppose US Sprint's request for interim authority subject to the same conditions as are applicable to MCI's Vnet. GTEC does protest any grant of permanent authority for VPNSM until issues surrounding the safeguarding of intraLATA traffic are resolved and expresses its hope that blocking issues will be promptly resolved in I.87-11-033.

US Sprint's Reply

On June 8, 1989, US Sprint filed a reply to the protests of Pacific and GTEC and DRA's comments. US Sprint points out that none of these parties oppose US Sprint's motion for interim authority so long as the conditions imposed on MCI's Vnet are also imposed on its VPNSM service. US Sprint has agreed to imposition of the same operating conditions on its VPNSM service. US Sprint supplemented its proposed tariff language regarding these conditions, appending it to its reply. US Sprint represents that

the proposed language, clearly stating that the use of VPNSM service for any intraLATA purposes other than this "strictly limited set of telephone numbers which address subscriber's computer data bases and internal operating systems" is unlawful, is acceptable to Pacific.

US Sprint asserts that all issues pertinent to granting its request for interim authority for VPNSM service have been resolved. US Sprint acknowledges that permanent authority must wait until Phase III intraLATA competition issues are resolved in I.87-11-033.

Discussion

The only issue before us at this time is whether US Sprint should be granted interim authority for its VPNSM service subject to the same conditions as those imposed on MCI for its Vnet service in D.87-11-064. It is clear from the protests and comments filed by GTEC, Pacific, and DRA that no party opposes such interim authority. Therefore, hearings on the interim authority issue clearly are not necessary and an ex parte interim opinion is appropriate.

In light of the conditions adopted in this decision, we find that granting interim authority for US Sprint's VPNSM service will not compromise or affect our ongoing consideration of US Sprint's application for final authority. We find that the public interest will be served by permitting US Sprint to provide VPNSM service on an interim basis because of the network efficiencies and desirable customer options afforded by the service.

Particularly because AT&T-C and MCI currently are authorized to provide intrastate virtual private network service, we conclude US Sprint would be found to suffer a competitive disadvantage if interim authority was not granted compared to the two other companies.

Both Pacific and GTEC expressed concern that any grant of interim authority to US Sprint make explicit that the intent of the numerous conditions is to preclude incidental intraLATA use except in the very specific circumstances of permitting VPNSM customers access to a strictly limited set of telephone numbers which address the customers' computer data bases and internal operating systems. We agree that the incidental intraLATA authority allowed by this decision is limited to the above circumstances only.

We intend to address the broader issue of intraLATA competition in Phase III of I.87-11-033. Until we do so in that proceeding, we will not act on final authority for any of the virtual private networks currently authorized on an interim basis.

Since all parties desire that US Sprint receive the same interim authority for its VPNSM service as that afforded MCI, we need to mention the treatment of billings for access services obtained from the LECs. As we did in D.87-11-064, we determine that these billings should be allocated between interstate and intrastate tariffs based on relative use, measured based on points of entry and exit of the calls.

Similarly, no party raised concerns regarding the rate structure US Sprint proposes for its intrastate VPNSM service on an interim basis. At the time the application was filed, US Sprint was providing VPNSM service on an interstate basis at the same rates. Absent objection, we find reasonable the proposed intrastate VPNSM rate structure.

Pacific expressed concern in its protest regarding US Sprint's current inability to report usage on a customer-specific level. US Sprint assured Pacific that the capability would soon be available (within 90 days of their mid-May discussions). Therefore, we will order that capability in place by September 15, 1989, allowing a grace period in the event snags were discovered in implementation of the capability.

Since we summarized the existing MCI Vnet conditions earlier in this discussion, we need not repeat them here. We will impose the same conditions on US Sprint's grant of interim authority in the ordering paragraphs below.

Findings of Fact

1. Both Pacific and GTEC filed motions to accept late-filed protests stating that US Sprint did not object to the motions.
2. No party opposed approval of interim authority for US Sprint's VPNSM service, subject to certain conditions, or requested hearings on the issue.
3. Pacific, GTEC, and DRA request that US Sprint's VPNSM service be subject to the same conditions that were imposed on MCI's Vnet service by D.87-11-064 on an interim basis.
4. US Sprint agrees to abide by the same conditions imposed on MCI for its Vnet service.
5. Interim authority for US Sprint's VPNSM service will not compromise or affect the Commission's consideration of US Sprint's application for final authority.
6. The public interest will be served by permitting US Sprint to provide VPNSM service on an interim basis.
7. Since AT&T-C and MCI are authorized to provide intrastate virtual private networks on an interim basis, US Sprint would be at a competitive disadvantage if it were precluded from offering its VPNSM service.
8. No party raised concerns regarding the rate structure which US Sprint proposes for its VPNSM service.
9. The proposed intrastate VPNSM service rates are reasonable.
10. US Sprint's treatment of billings for access services should be allocated between interstate and intrastate tariffs based on relative use measured based on points of entry and exit of the calls.

11. US Sprint has assured Pacific that the capability to report usage of its VPNSM service on a customer-specific level would soon be available.

Conclusions of Law

1. Pacific and GTEC's motions to file late-filed protests should be granted.

2. Ex parte interim authority for US Sprint's VPNSM service should be granted.

3. The Commission should impose the same conditions on US Sprint's VPNSM service as were imposed on MCI's Vnet service by D.87-11-064, and which appear in the ordering paragraphs below.

4. US Sprint should be able to report usage on a customer-specific-level by September 15, 1989.

5. In order to meet US Sprint's customers' immediate needs, the following order should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. On or after the effective date of this order, US Sprint Communications Company Limited Partnership (US Sprint) may make an advice letter filing under the terms of General Order 96-A to implement the provision of VPNSM service on an interim basis. The filed tariffs shall contain the terms specified in the tariff schedules attached to its application and motion for interim authority, specifically providing as follows:

- a. That they apply only pending the effectiveness of US Sprint tariff schedules offering VPNSM service on a broader basis pursuant to a subsequent Commission order, except that if a subsequent Commission order substantially denies A.89-04-025, the tariff schedules authorized by the present order shall remain in effect for 18 months from the date of that subsequent order.

- b. That VPNSM service may lawfully be used for intraLATA communications solely for the purpose of permitting a Vnet customer access to a strictly limited set of telephone numbers which address a customer's computer data bases and internal operating systems.
- c. That the use of VPNSM service for other intraLATA communications is unlawful, and that US Sprint does not offer VPNSM service for such use.
- d. That a customer must take all reasonable steps to assure that its VPNSM service is not used by any person for purposes of unauthorized intraLATA communications, pending a subsequent Commission order authorizing broader offering of VPNSM service.
- e. That intraLATA calling should be routed to local exchange carriers as appropriate, for example, through the programming of the customer's PBX switch or arranging of Centrex route guides.
- f. That US Sprint and/or the local exchange carrier (LEC) will work with the customer in implementing appropriate routing of intraLATA traffic.

The effective date of these tariff schedules shall be no sooner than five days after the date of filing.

2. Access services from the LECs shall be obtained separately for intrastate and interstate VPNSM services, with the separation based on the points at which calls enter and leave US Sprint's system.

3. US Sprint shall fully and effectively inform its VPNSM service customers as follows:

- a. That LEC facilities are to be used for all intraLATA calling except for the authorized intraLATA purposes;
- b. That use of the VPNSM service for other intraLATA calling is unlawful;

- c. That the VPNSM tariff requires that customers take all reasonable steps to ensure that VPNSM service is not used to make unauthorized intraLATA calls pending a final decision in A.89-04-025;
- d. That intraLATA calling should be routed to LECs as appropriate through the programming of the customer's PBX switch or arranging of Centrex route guides; and
- e. That US Sprint and/or the LEC will work with the customer in implementing appropriate routing.

4. US Sprint shall provide the following information to the Commission Advisory and Compliance Division (CACD) and the LECs:

- a. US Sprint shall advise the LECs of customers in California to which US Sprint supplies VPNSM service, subject to appropriate proprietary agreements.
- b. US Sprint shall provide monthly reports to the LECs within whose service territories VPNSM service is provided, furnishing the recorded VPNSM service usage originating and terminating within that service area, the applicable intrastate/interstate breakdown, and if available a breakdown of the recorded usage between that portion which uses LEC access facilities and that which does not.
- c. US Sprint shall provide reports to CACD describing how each customer's PBX or other switching equipment has been programmed to route intraLATA traffic to the LEC, as well as other US Sprint efforts to comply with our restrictions on intraLATA VPNSM use, with reports on new customers due 30 days after each installation of VPNSM service. These reports should be updated semi-annually and made available to LECs, subject to appropriate proprietary agreements.

5. US Sprint shall further maintain records adequate to identify customer intraLATA VPNSM usage, based on the points at

which calls enter and exit the US Sprint system by September 15, 1989.

6. To the extent not otherwise granted by this order, US Sprint's motion for interim authority of April 12, 1989 is denied.

This order is effective today.

Dated AUG 3 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did not
participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weisser

Victor Weisser, Executive Director

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