

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF A JOINT APPLICATION) Application No. C-923
BY CONSOLIDATED TELEPHONE COMPANY)
AND THE NEBRASKA CENTRAL TELEPHONE CO.)
FOR CERTIFICATES OF PUBLIC) GRANTED
CONVENIENCE AND NECESSITY TO PROVIDE)
FOR TRANSMISSION OF DISTANCE LEARNING)
AND CERTAIN ADDITIONAL TELECOMMUNI-)
CATIONS TRAFFIC.) Entered: April 14, 1992

APPEARANCES

For the Applicants
Paul M. Schudel, Esq.
WOODS & AITKEN
1500 American Charter Center
206 South 13th St.
Lincoln, NE 68508
(402) 474-0321

For the Intervenor, US West
Communications, Inc.
Richard L. Johnson, Esq.
1314 Douglas On-The-Mall
Omaha, NE 68102
(402) 422-5617

O P I N I O N A N D F I N D I N G S

BY THE COMMISSION:

The applicants, Consolidated Telephone Company ("Consolidated") and The Nebraska Central Telephone Co. ("Central") filed their joint application (hereinafter referred to simply as "the application") March 11, 1992 seeking certificates of public convenience and necessity. Public notice was duly published in the Omaha Daily Record March 13, 1992 pursuant to the Commission's Rules of Procedure. On April 6, 1992 the applicants filed a motion for leave to amend the application. At the same time, US West filed a petition to formally intervene. The US West petition specifies that it consents to the granting of the amended application. At the Commission's weekly formal meeting, April 6, 1992, it granted the motion. The amended application is therefore the subject of this order.

As amended, the application seeks certificates of authority for the construction of a fiber optic telecommunications facility ("facility") to provide "Distance Learning" to the Anselmo-Merna, Ansley, Broken Bow, Loup City, and Sandhills School Districts ("school districts") in connection with a program referred to as the "Sandhills Technology/Telecommunications Educational Project ("STEP"). Construction of this network by the applicants will be, at least in part, in the US West local exchange.

No protests to the application were received. The Nebraska Division of Communications filed letter of informal

intervention apprising the Commission of its interest in this matter. The application will therefore be administratively processed without¹ a hearing and relying on the affidavit attached thereto.

Upon consideration of the pleadings, the affidavit of Clifford E. Thompson (Consolidated's Secretary), the pertinent statutory authority, and being fully advised, the Commission is the opinion and finds:

This application is governed specifically by Nebraska Rev. Stat. §75-604 (Reissue 1990) which states in pertinent part:

"(1) Except as provided in section 86-805, no. . . corporation . . . shall offer any telecommunications service or shall construct new telecommunications facilities in or extend existing telecommunications facilities into the territory of another telecommunications company for the purpose of providing any telecommunications service without first making an application for and receiving from the commission a certificate of public convenience and necessity, after due notice and hearing under the rules and regulations of the commission. Before granting a certificate of convenience and necessity, the commission shall find that: (a) The territory in which the applicant proposes to offer telecommunications service is not receiving reasonably adequate telecommunications service; (b) the portion of the territory of another telecommunications company in which or into which the applicant proposes to construct new facilities or extend its existing facilities is not and will not within a reasonable time receive reasonably adequate telecommunications service from the telecommunications company already serving the territory; or (c) the application is agreeable to the subscribers or subscribers and to all telecommunications companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party or parties requiring telecommunications service.

Before the Commission can issue the certificates sought by the applicants, it must make specific findings as required by §75-604. *Chambers Rural Tel. Co. v. K. & M. Tel. Co., Inc.*, 179 Neb. 735, 140 N.W.2d 400 (1966).

Consolidated is a Nebraska corporation with its principal place of business located in Lincoln, Nebraska. As a local exchange carrier ("LEC"), Consolidated provides telecommunications services to subscribers in the Anselmo, Arthur, Ashby, Bingham, Brewster, Brownlee, Dunning, Halsey, Hyannis, Merna, Mullen, Purdum, Seneca, Thedford, and Whitman exchanges.

Central is a Nebraska corporation with its principal place of business located in Gibbon, Nebraska. As a LEC, Central provides telecommunications services to subscribers in the

¹ See Title 291 Neb. Admin. Regs. Ch. 1, Rule 018.03

Ansley, Arcadia, Burwell, Comstock, Ericson, Gibbon, North Burwell, North Loup, Sargent, Scotia, Shelton, and Taylor exchanges.

The telecommunications services furnished by Consolidated and Central are, as a general matter, subject to regulation by the Commission and are provided pursuant to statutes, rules, and regulations administered by the Commission.

Distance Learning, as generally understood, and as used specifically in the amended application, means communications which provide any student who is physically separated from the instructor with the capacity to interact with that instructor or with mediated instructional programs.

The school districts cited above, through their school administrators, have stated to Consolidated and Central their desire to implement Distance Learning between their schools with implementation coordinated through STEP. In this connection, STEP and the school districts have requested Consolidated and Central to construct the facility for the transmission of audio and video signals and to allow provision of Distance Learning.

The facility will proceed generally along a route with a northernmost point at the Sandhills High School building in Dunning, then proceeding to the Anselmo-Merna High School building in Merna, thereafter entering US West's Broken Bow exchange area at the meet point with Consolidated's Merna exchange, proceeding to the Broken Bow High School building, then to Central's Ansley exchange to the Ansley High School building, then across portions of US West's Mason City and Litchfield exchanges to US West's Loup City exchange and through that exchange to the Loup City High School building. The facility will not be connected to US West's central offices without US West's concurrence.

US West has consented to the construction of the facility in and through those exchanges of US West as described in the preceding paragraph for the purposes of providing Distance Learning services.

Consolidated and Central intend to install a multi-fiber optical cable as the facility, to be jointly owned by both companies on an equal basis, with sufficient capacity to carry Distance Learning traffic for STEP and the school districts, and to complete placement of the facility for use by July 15, 1992. Additionally, Consolidated and Central intend to lease a portion of the capacity of the facility between Broken Bow and Loup City to US West for the purpose of providing diverse routing for such exchanges as well as other US West exchanges. Use of the facility will be pursuant to contractual

Application C-923

Page 4

arrangements with STEP, the school districts, and US West.²

Absent construction of the facility, adequate transmission facilities do not exist which can meet the specific requirements of STEP and the school districts, nor does transmission capacity exist to allow diverse routing of telecommunications traffic to US West's Broken Bow and Loup City exchanges. Duplication of facilities will not occur as a result of this application's approval. Further, the application is agreeable to the subscribers (the school districts) and to all the affected telecommunications companies. Approving the application is in the interest of the public and the subscribers. Therefore, the application satisfies the requirements established by §75-604(c). The evidence before us demonstrates that the public convenience and necessity requires this application be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-923 be, and it is hereby, granted and that Consolidated Telephone Company and The Nebraska Central Telephone Co. are authorized to construct, operate, and maintain the facility over the route generally described *supra* to provide transmission for Distance Learning services for STEP and the school districts, and to provide transmission capacity for diverse routing of telecommunications traffic of US West.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's official certificate of public convenience and necessity to Consolidated Telephone Company and The Nebraska Central Telephone Co. to construct, operate, and maintain the facility over the route and for the purposes of providing Distance Learning and diverse routing as described previously in this order.

MADE AND ENTERED in Lincoln, Nebraska this 14th day of April, 1992.

²Review of the contract leads us to conclude its contents are not germane to approval of the application, other than that the parties are in agreement as to how the system shall affect them. We therefore do not require the contract to be made a part of the record in this application.

Application C-923

Page 5

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Unwille
Duane D. Gray

//s//Frank E. Landis, Jr.
//s//James F. Munnelly
//s//Eric Rasmussen

Frank E. Landis, Jr.
Chairman

ATTEST:

W. R. Long
Executive Director