

BEFORE THE
NEBRASKA PUBLIC SERVICE COMMISSION

Application of TCG Omaha)	Application No. C-984
for a Certificate of Public)	
Convenience and Necessity to)	GRANTED
provide interLATA and intraLATA)	
private line services throughout)	Entered: October 4, 1993
the State of Nebraska)	

APPEARANCES

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Informal Intervenors/Amicus Curiae:

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For the Commission:

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OPINION AND FINDINGS

This matter comes before the Commission pursuant to an Application by the Applicant filed on April 2, 1993 seeking a Certificate of Convenience and Necessity to provide interLATA and intraLATA private line services throughout the State of Nebraska.

Petitions of Formal Intervention were timely filed by US West Communications, Inc. ("US West"), The Lincoln Telephone and Telegraph Company ("LT&T"), and the Nebraska Telephone Association ("NTA"). Notice of this Docket was published in the Daily Record, Omaha, Nebraska on April 6, 1993 pursuant to the rules and regulations of the Commission pertaining to notice.

On June 23, 1993, the Applicant filed an Amendment to Application and Request For Authority (the "Amendment") to remove from the scope of its proposed service territory the territory served by LT&T, described as LATA No. 958 as identified in the LATA Directory.

On June 22, 1993, LT&T filed a Motion to Withdraw Petition of Formal Intervention in reliance on the Applicant's filing of the Amendment. The Commission granted the Applicant's Amendment and LT&T's Motion to Withdraw on June 23, 1993.

On August 4, 1993 MCI Telecommunication Corporation ("MCI") filed a Petition for Informal Intervention in this case.

A public hearing on the Docket was held pursuant to written notice on August 10, 1993 at 9:30 a.m. in the Commission Hearing Room. At the Public Hearing, the Commission voted to deny MCI's Petition for Formal Intervention but granted MCI's request to file an Amicus Brief in support of the Applicant's Application.

This Application is governed by Neb. Rev. Stat., Sections 86-605 and 75-604 and Title 291 Neb.Admin.Reg., Chapter 5, Section 003.12A.

Summary of Testimony and Comments

Mr. Dennis Hodges, Vice President and General Manager of the Applicant, explained in his testimony that the Applicant seeks authority to provide private line services in the Omaha LATA and the Grand Island LATA. Mr. Hodges explained how the Applicant's provision of these services will provide diverse, dedicated local routes for long distance companies to reach their customers and for other telecommunications dependent businesses to connect their local offices. Mr. Hodges also explained the Applicant's qualifications for a Certificate of Service Authority pursuant to Section 75-604 and 86-805 of the Neb.Rev.Stat. and PSC's

Telecommunications Rules and Regulations. Mr. Hodges then described the Applicant's technical, managerial and financial qualifications to provide the proposed service and what benefits the Applicant's proposed service will bring to customers in the State of Nebraska. Mr. Hodges emphasized that the Applicant seeks authority to offer only intrastate private line services. The Applicant does not utilize a switch in its Omaha facilities nor does it have firm plans to offer switched services. Mr. Hodges explained that the Applicant will provide "operational security" to telecommunications users by offering diversity in the supply of telecommunications services as well as physical diversity in the form of a separate and redundant fiber optic transmission line network. For customers such as long distance companies and information service companies which are concerned that local telephone companies are or will be competitors in their long distance information businesses, Mr. Hodges also explained that the Applicant's proposed services will offer its customers the "strategic security" that comes from dealing with a company other than the local telephone company for private line services. Mr. Hodges added that the proposed private line service does not include a dial tone and is not local exchange service. Services proposed by the Applicant are simply a point-to-point relationship for the transmission of data and voice. Mr. Hodges observed that telephone companies' private line services cannot adequately satisfy the demands of users for operational security and strategic security because such security is best obtained through different suppliers.

Mr. Gary Ball, National Tariff Administrator in the Regulatory and External Affairs Department of Teleport Communications Group, Inc. ("TCG") described how TCG's headquarter's operations will help the Applicant run the proposed private line network in Nebraska. Mr. Ball also described what tariffs the Applicant will file for its intrastate services. Mr. Ball also informed the Commission that TCG is the country's oldest competitive access provider ("CAP") and that it operates fiber optic networks in several states. Mr. Ball testified that while the Applicant is the first CAP to seek certification from the Nebraska Public Service Commission, numerous other states throughout the country have already authorized such competition. In each state in which it operates, TCG has been authorized to provide intraLATA private line services such as those which the Applicant is requesting in the Application. Mr. Ball explained that CAPs are facility based carriers which construct and operate their own local fiber optic ring networks. Mr. Ball reiterated that the Applicant is not proposing to provide local exchange service in Nebraska. Mr. Ball further testified that the intrastate private line services sought to be provided by the Applicant do not constitute universal service offerings in the form of switched two-way voice communications nor would these services negatively impact universal service offerings.

The Formal Intervenor did not present witnesses at the Hearing. However, US West, the major provider of high capacity private line services in the Omaha LATA, formally notified the Commission in correspondence from US West's Senior Attorney, Mr. Richard Johnson, on August 9, 1993, that US West did not object to the Commission granting a Certificate of Convenience and Necessity to the Applicant.

Mr. Rick Wade, Counsel for MCI Telecommunications Corporation, requested the Commission rule on MCI's Petition to enter the proceeding as an Informal Intervenor. The Commission denied MCI's request as being untimely but granted leave to MCI to submit an Amicus Brief to set forth MCI's position concerning the Application. MCI subsequently submitted an Amicus Brief which supported the Applicant's Application as promoting the public policy goals set forth in Nebraska's telecommunications statutes. MCI stated that as a potential customer of the Applicant, MCI supported the opportunity to have a choice with respect to access services and access providers in Nebraska and that the Applicant's proposed services would offer that alternative. MCI concluded that private line providers, such as the Applicant, will offer the diversity and security not presently available in the marketplace.

Cross-examination of the Applicant's witnesses by the NTA, members of the Commission and Commission staff focused on whether the Applicant was intending to provide local exchange services in the form of two-way switched voice communications, which would be competitive to existing local exchange carriers. In addition, questions were raised as to whether the intrastate private line services provided by the Applicant should require the Applicant to contribute to a universal service fund and whether such services would constitute universal service offerings.

As a part of its testimony, the Applicant stated that it would not object to an Order of the Commission that would restrict the Applicant's service territory only to that territory currently served by US West.

FINDINGS

Upon consideration of the Application, the governing statutes and rules, the evidence produced at the public hearing, and giving due consideration to the letters, petitions, and pleadings received by the Commission concerning this Docket, and being fully informed, the Commission is of the opinion and finds as follows:

1. The Applicant's Application, as amended, satisfies the requirements of Neb.Rev.Stat. Sections 86-805 and 75-604 and Title 291 Neb.Admin.Reg. Chapter 5, Section 003.12A.

2. The territory in which the Applicant proposes to offer private line telecommunications service is not receiving reasonably adequate private line telecommunications service because current service providers cannot satisfy the need for operational security and strategic security.

3. The territory in which the Applicant proposes to provide its private line services is not and will not within a reasonable time receive reasonably adequate private line telecommunications services from the telecommunication company(s) already serving the territory until additional special access (private line) service providers are available.

4. US West has stated that it does not object to a Certificate of Convenience and Necessity being granted to the Applicant for the purposes specified in its Amended Application and Request for Authority dated June 23, 1993.

5. MCI Telecommunications Corporation, a potential major customer of the Applicant, supports the Applicant's Application.

6. The construction and operation of a redundant fiber optic network by the Applicant in the territory it seeks to serve will not create an unnecessary duplication of facilities because the purpose of private line access is to provide operational security and strategic security through a redundant and parallel telecommunications network to customers.

7. The provision of private line telecommunications services by the Applicant will provide telecommunications users with both operational security and strategic security, which will promote the public policy goals of the State of Nebraska set forth in Neb.Rev.Stat. Section 86-801 and is therefore in the interest of the public and the parties requesting private line telecommunications services.

8. The Applicant possesses adequate financial resources to provide the proposed services.

9. The Applicant possesses adequate technical competency to provide the proposed services.

10. The private line services to be offered by the Applicant do not constitute "basic local exchange services" as that term is defined in Neb.Rev.Stat. Section 86-802(2). Accordingly, such private line services do not constitute universal service offerings nor will such services adversely impact universal service offerings.

11. The Applicant has offered to restrict its operating territory under this Application to the territory currently served

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by US West. US West has stated that it has no objection to an Order which would grant the Applicant's Application but which would limit its service territory to those service areas where US West is the local exchange carrier.

ORDER

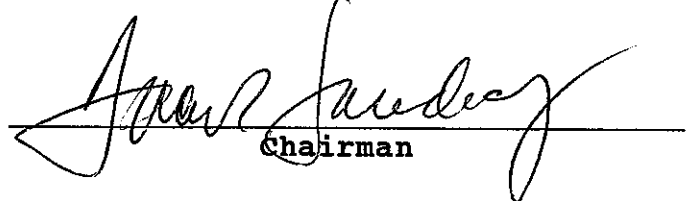
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that, pursuant to Neb.Rev.Stat. Sections 86-805 and 75-604 and Title 291 Neb.Admin.Reg., Chapter 5, Section 003.12A, Application No. C-984, as amended, be, and it is hereby, granted, provided, however, that the service territory of the Applicant shall be limited to that territory served by US West Communications Company as the local exchange carrier as authorized and described in the Orders and records of the Nebraska Public Service Commission.

IT IS FURTHER ORDERED that the Applicant file a tariff prior to offering service pursuant to the certificate granted in this Order.

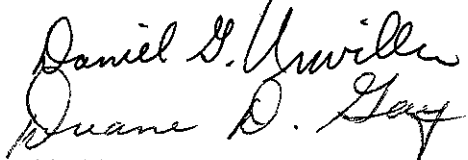

IT IS FINALLY ORDERED that this Order be, and it is hereby, made the Commission's official Certificate of Convenience and Necessity to furnish the service as authorized herein.

Made and entered at Lincoln, Nebraska this October 4, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

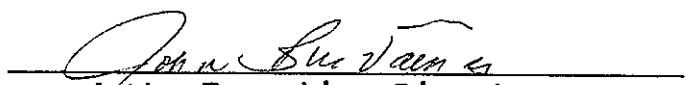

Chairman

COMMISSIONERS CONCURRING:

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

ATTEST:


Acting Executive Director