

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-1064
of TCG Omaha which seeks authority)	
to amend its Certificate of Public)	
Convenience and Necessity to pro-)	GRANTED
vide intrastate intraLATA inter-)	
exchange services in the North 402)	
Lata (the "Omaha LATA").)	Entered: July 12, 1994

APPEARANCES

For the Applicant

Loel P. Brooks
Attorney at Law
NBC Center, Suite 755
Lincoln, NE 68508

Steven Andreassi
Teleport Communications Group
1 Teleport Drive
Staten Island, NY 10311

Teresa Marrero
Attorney at Law
Teleport Communications Group
1 Teleport Drive
Staten Island, NY 10311

For the Communications Department

Deonne L. Niemack
Staff Counsel
1200 N Street; 300 The Atrium
Lincoln, NE 68509

For the Formal Intervenor US West

Richard L. Johnson
Attorney at Law
200 S. 5th Street, Room 1800
Minneapolis, MN 55402

For the Informal Intervenor MCI

Rick G Wade
Attorney at Law
Crosby, Guenzel, Davis, & Kessner
134 S. 13th Street, Suite 400
Lincoln, NE 68508

PRELIMINARY MATTERS

TCG Omaha, of Omaha, Nebraska, filed its application April 7, 1994. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering intraLATA interexchange service in the North 402 LATA (the "Omaha LATA"). Notice of the application appeared in the Omaha Daily Record, April 13, 1994. A Petition of Formal Intervention was timely filed by US West Communications, Inc. ("US West"), and a Petition of Informal Intervention was timely filed by MCI Telecommunications Corporation ("MCI"). TCG appeared before the Commission for a hearing, chaired by Commissioner Johnson, June 27, 1994 in the Commission Hearing Room, Lincoln, Nebraska.

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BY THE COMMISSION

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

Upon consideration of the application, the governing statutes and rules, the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

Nebraska was divided into three Local Access Transport Areas ("LATAs") as a result of the terms of the Modification of Final Judgement (the "MFJ") issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co., 552 F.Supp. 131 (D.D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph Co., 569 F.Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

While Neb. Rev. Stat. Sec. 75-604, by its language, refers to local exchange service, the Nebraska Supreme Court in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb 286, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of the statute. This was recognized by the Legislature in LB 835 (LAWS 1986) because interexchange services in Sec. 86-805 (part of LB 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguished between intraLATA and interLATA services when deciding applications.

Steven Andreassi, Regulatory Analyst in TCG's Regulatory and External Affairs Department, testified. Mr. Andreassi has considerable telecommunications experience, and previously worked for Rochester Telephone Corporation before coming to TCG. He has a Masters Degree in Economics from Pennsylvania State University.

Mr. Andreassi testified, and the pleadings reflect, that the applicant seeks to amend its certificate of public convenience and necessity to also provide intraLATA interexchange authority in the North 402 LATA (the "Omaha LATA"). TCG will offer service exclusively to businesses. On October 4, 1993, the Commission granted TCG Omaha a certificate of public convenience and necessity to provide private line telecommunications service in the territory served by US West. The present application requests modification of the original certificate.

TCG Omaha is a New York partnership formed between TCG Partners and Cox Teleport Omaha. Cox Teleport owns 65 percent of TCG Omaha, while TCG Partners has a 35 percent ownership interest. Under the Order entered in C-984, the Commission

determined the applicant to be technically qualified and financially able to provide private line services. Accordingly, the Commission hereby determines the applicant is also technically qualified and financially capable of offering switched intraLATA service in the Omaha LATA.

Mr. Andreassi testified the territory in which the Applicant proposes to offer intraLATA telecommunications services can be improved by granting TCG Omaha the authority to provide intraLATA interexchange service. TCG Omaha will offer customers operational security and strategic security, components which are not currently available with present certificated companies.

The applicant does not propose to construct new facilities for use in intrastate intraLATA service in Nebraska. Therefore, no existing facilities will be duplicated if this application is granted.¹

MCI Telecommunications Corporation, Inc., a potential major customer of the Applicant, testified in support of TCG Omaha's application.

Granting this application does not allow the applicant to provide basic local exchange service, as defined in Neb. Rev. Stat. Sec. 86-202(2). The complete scope of authority in the certificate issued to TCG Omaha is limited to private line and intrastate intraLATA interexchange service. Both services will benefit the public and satisfy needs of customers that cannot presently be met elsewhere.

Based on the testimony and the exhibits, the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

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., Chap. 5, Sec. 003.12, Application No. C-1064 be and it is hereby granted and the certificate of public convenience and necessity to provide private line service in Application No. C-984 to TCG Omaha, of Omaha, Nebraska is hereby amended to authorize the applicant to

¹See Neb. Rev. Stat. Sec. 75-604.

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also provide intrastate intraLATA interexchange service in the North 402 LATA.

IT IS FURTHER ORDERED that applicant shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the state of Nebraska on a combined interstate-intrastate basis, the investment, if any, in telephone plant and equipment located with the state, accumulated depreciation thereon, operating revenues, operating expenses and taxes.

IT IS FURTHER ORDERED that the applicant file an updated 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 12th day of July, 1994.

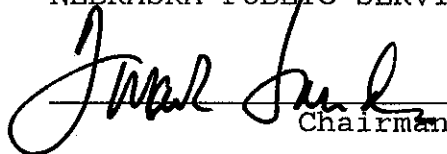
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

//s//Rod Johnson

//s//Frank E. Landis

//s//James F. Munnelly


Chairman

ATTEST:

COMMISSIONERS DISSENTING

//s//Duane D. Gay

//s//Daniel G. Urwiller


Executive Director

DISSENT OF COMMISSIONER DUANE D. GAY:

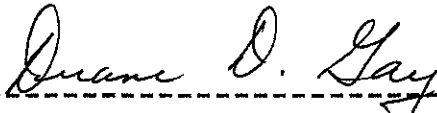
My dissent, sorry to say, comes only from application of common sense to the evidence adduced by the applicant which constitutes the only evidence in the record. Common sense tells me that TCG appears here as yet another "cream skimmer", the likes of which we have seen in droves over the last 15 years. It is obvious to me that TCG will successfully enlist a number of the biggest and most remunerative customers now served by U.S. West, leaving U.S. West the task of trying to serve a shrinking customer base of low volume subscribers with what may be the best plant in the country, yea the world. There is no way that this pioneer of telephone service and communication technology can

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continue to supply first rate service to the ordinary citizen and small business if a company such as TCG is continually allowed to skim the cream that comes from the communication cow. I represent a sparsely populated area compared to metropolitan Omaha. The people in my territory work just as hard and deserve to live just as well as their cousins in metropolitan areas. There is no reason why they should exist on skimmed milk service because this Commission has sat back and permitted other providers to skim the cream.

The pusillanimous approach U.S. West takes to applications such as this is incomprehensible. I know U.S. West will lose business due to the action of the majority. Surely with its resources it could provide the Commission with the data it needs to evaluate the impact such applications as this have on the rank and file telephone user in Nebraska. It is inconceivable that it has chosen to sit back and take what's left of the telephone business when the skimmers have had their fill. My colleagues should demand this type of evidence before allowing the record to be closed. Somebody has got to protect the general public.



Duane D. Gay
Commissioner