

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1340
of Excel Telecommunications, Inc.)
of Dallas, Texas seeking author-)
ity to obtain a certificate of)
public convenience and necessity) GRANTED
to provide local exchange service)
in exchanges served by GTE of the)
Midwest, Inc., Sprint United, and)
US West Communications, Inc.) Entered: July 15, 1997

APPEARANCES:

For Excel:
Eric Anderson
Fraser, Stryker et. al.
500 Energy Plaza
409 S. 17th Street
Omaha, NE 68102

and,

Karen Eisenhauer
Swidler & Berlin, Chtd
3000 K Street, NW
Washington, D.C. 20007

For Arapahoe, Benkelman, Cozad
Diller, Henderson, Plainview
and Wauneta Telephone
Companies:
Timothy F. Clare
Rembolt, Ludtke, et. al.
1021 Lincoln Mall, Suite 102
Lincoln, NE 68508

For Aliant Communications
Paul M. Schudel
Woods & Aitken
206 South 13th St., Suite 1500
Lincoln, NE 68508

For the Commission Staff
Deonne Bruning
300 The Atrium, 1200 N Street
Lincoln, NE 68509-4927

BY THE COMMISSION:

By its application filed May 13, 1996, Excel Telecommuni-
cations, Inc. (Excel) of Dallas, Texas, seeks authority to obtain
a certificate of public convenience and necessity to provide lo-
cal exchange service in the areas served by GTE of the Midwest,
Inc. (GTE), Sprint-United (United), and US West Communications
(US West). Notice of the application appeared in The Daily
Record on May 16, 1996. The following parties filed petitions
for formal intervention: Arlington Telephone, Arapahoe Telephone,
Aliant Communications, Benkelman

Application No. C-1340

PAGE TWO

Telephone, Blair Telephone, Cambridge Telephone, Clarks Telephone, Consolidated Telco, Consolidated Telephone, Cozad Telephone, Curtis Telephone, Dalton Telephone, Diller Telephone, Eastern Nebraska Telephone, Glenwood Telephone, Great Plains Communications, Hamilton Telephone, Hartington Telephone, Henderson Cooperative Telephone, Huntel Telephone, K & M Telephone, Keystone-Authur Telephone, Nebraska Independent Telephone Association, Nebraska Telephone Association, Plainview Telephone, Pierce Telephone, Plainview Telephone, Rock County Telephone, Southeast Nebraska Telephone, Stanton Telephone, US West Communications and Wauneta Telephone. An evidentiary hearing was held on March 28, 1997, with Commissioner Rod Johnson chairing the proceeding.

EVIDENCE

In support of its application, Excel introduced Ron McClenan, Excel's Director of Industry Telco Relations, who testified:

Excel seeks authority to provide local exchange services in areas served by GTE, United, and US West. Excel is a Texas corporation which is authorized as an interexchange carrier in Nebraska. Excel informed the Commission on June 27, 1997, that it was amending its application to reflect a corporate reorganization. To take advantage of savings in operating costs and capital expenditures, Excel will merge with Telco Communications Group and will become a wholly-owned subsidiary of a new holding company. This transaction is pending approval in Application No. C-1568.

Excel intends to provide resold local exchange services, and at this time is not seeking authority to become a facilities-based provider. Currently, Excel has approximately 15 applications for certificates pending in the United States and they have been certificated in 19 other states. No state commission has denied Excel a certificate of authority.

Excel uses independent representatives to market its service. Currently, Excel has approximately 1,000,000 sales representatives in the United States. A number of safeguards will be used to assure that its marketing representatives do not solicit customers from areas where Excel does not have authority. Excel sends a monthly newsletter to all agents which will be used to communicate the Nebraska exchanges where agents can sell local service. In addition, Excel has a cable station which will be used to broadcast relevant marketing information to its agents.

Application No. C-1340

PAGE THREE

Another safeguard is Excel's requirement that every sale has a Letter of Agency Service Request Form (LOA). On two separate occasions, Excel was fined by the Florida Public Service Commission due to allegations that agents had forged LOAs. Excel dismissed the agents involved and is now seeking legal action against them. Furthermore, Excel does random checks of LOAs by calling the customer to verify the order. In Nebraska, Excel was experiencing interexchange billing problems as a result of the company's rapid growth. To remedy the problem, Excel implemented a new policy which provided additional time to transfer customers from their current interexchange providers to Excel. This has reduced the number of billing problems customers' experience.

Excel has an 800 number for customer complaints which operates 24 hours a day. In addition, Excel has established an 800 number for sales agents to call with any questions. Advance payments or deposits are not normally collected from customers.

Financial information shows that Excel had \$45 million dollars in revenue in 1994. In the first six months of 1996, Excel's revenue had grown to \$196 million, with net income of approximately \$8.5 million. Recently, Excel had a public offering of stock, which raised \$50 million.

Excel signed a stipulation with several formal intervenors agreeing to offer services only in the exchanges served by GTE, United, and US West. Should Excel want to offer local service in territories served by other local exchange carriers, pursuant to the stipulation, Excel will come back to this Commission to request additional authority.

No other party introduced testimony nor evidence.

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

On February 8, 1996, the Federal Telecommunications Act of 1996 opened the way for competition in all corners of the telecommunications market. One purpose of the Act is to promote the development of competition in local exchange service markets. To implement that, the federal act requires incumbent local exchange carriers resell their services to new entrants and to open their existing facilities under interconnection agreements which must be negotiated or arbitrated and then be approved by state commissions. The federal act contemplates simplifying and reducing existing regulations to expedite entry by new local exchange carriers by removing all barriers to entry.

Application No. C-1340

PAGE FOUR

This Commission finds that it should embrace and adopt the pro-competitive policies of the Act. There is a strong likelihood that multiple benefits will flow from a competitive environment. Competition in local exchange service is likely to produce improved efficiency in the provision of services, accelerated deployment of technological innovations and improved customer service. Competition will also offer consumers a choice of providers.

Pursuant to Commission rules and regulations, the Commission will consider applications, including Excel's application, for authority to provide local exchange service using the following criteria and standards:

- (a) Whether the applicant has provided the information required by the Commission;
- (b) Whether the applicant has provided a performance bond, if required;
- (c) Whether the applicant possesses adequate financial resources to provide the proposed service;
- (d) Whether the applicant possesses adequate technical competence and resources to provide the proposed service;
- (e) Whether the applicant possesses adequate managerial competence to provide the proposed service; and
- (f) Whether granting the applicant a certificate preserves and advances universal service, protects the public safety and welfare and ensures the continued quality of telecommunications services and safeguards the rights of consumers, pursuant to Section 253(b) of the Federal Telecommunications Act.

Excel has demonstrated that it meets or exceeds the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange service in Nebraska.

Before Excel is allowed to provide local exchange service to its users:

Application No. C-1340

PAGE FIVE

- (a) Excel, either through negotiation or arbitration, must reach interconnection agreements with US West, United or GTE;
- (b) The Commission must approve the interconnection agreement(s);
- (c) Excel must file, and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of Neb. Admin. R. & Regs. tit. 291, ch. 5 ; and
- (d) Excel must include in its promotional materials, used by all of its marketing personnel, a listing of Nebraska exchanges where Excel has authority to operate as a local exchange service provider.

Further, prior to providing service to any areas outside the territories of US West, United and GTE, Excel must obtain additional authority from this Commission. The Commission will enforce the stipulation entered into by the parties. The intervenors who participated in the stipulation maintain the right and opportunity to contest any future application of Excel to expand its service territory in Nebraska. Nothing in the stipulation shall in any way limit Excel's right in connection with any such future application to demonstrate to the Commission that it has satisfied the criteria or standards established by the Commission in such cases.

As a provider of local exchange service in Nebraska, Excel is subject to the same laws, rules and regulations, both federal and state (including, but not limited to laws, rules or regulations regarding universal service, restrictions on joint marketing, quality of service, and deposits), applicable to any other local exchange company except those obligations imposed on incumbent local exchange carriers pursuant to Section 251(c) of the Federal Telecommunications Act.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1340 be, and it is hereby, granted subject to applicant's fulfillment of the conditions set forth in the foregoing findings.

Application No. C-1340

PAGE SIX

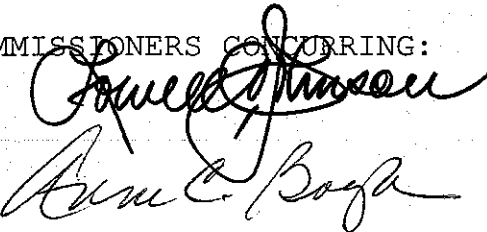
IT IS FURTHER ORDERED that upon final approval of appropriate interconnection agreement(s), Excel is granted authority to provide local exchange service in areas served by US West, United and GTE. Excel must make further application to this Commission for authority to provide local exchange service outside the US West, United and GTE service areas.

IT IS FURTHER ORDERED that Excel shall abide by the same laws, rules and regulations, both federal and state applicable to other local exchange carriers except obligations imposed on incumbent local exchange carriers pursuant to Section 251(c) of the Federal Telecommunications Act.

IT IS FINALLY ORDERED that this Order be, and it is hereby, made the Commission's official certificate of public convenience and necessity to the applicant to provide local exchange service within the territory described herein in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of July, 1997.

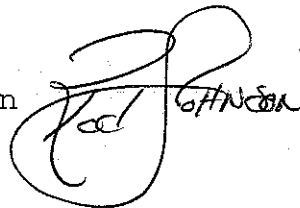
COMMISSIONERS CONCURRING:



//s//Rod Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION

Chairman



ATTEST:

Deputy Director

