

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1474
of MCI Metro Access Transmission)
Services, Inc. of Vienna, Virginia)
seeking to obtain a certificate of) GRANTED
public convenience and necessity)
to provide local exchange telecom-)
munications services within the)
State of Nebraska.) Entered: May 6, 1997

APPEARANCES:

For the Applicant:
For MCI Telecommunications
Steven G. Seglin
Crosby, Guenzel, Davis,
Kessner & Kuester
134 South 13th St., Suite 400
Lincoln, NE 68508

For the Nebraska Telephone
Association
Jack L. Shultz
Harding, Shultz & Downs
121 South 13th St., Suite 800
P.O. Box 82028
Lincoln, NE 68501-2028

and,

William P. Hunt, III
MCI Telecommunications Corp.
707 Seventeenth St., Ste. 3600
Denver, Colorado 80202

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

For Arapahoe, Benkelman, Cozad
Diller, Henderson, Plainview
and Wauneta Telephone
Companies
Timothy F. Clare
1021 Lincoln Mall, Suite 102
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BY THE COMMISSION:

By its application filed January 10, 1997, MCI Metro Access Transmission, Inc. ("MCI Metro") seeks authority to obtain a certificate of convenience and necessity to provide local exchange telecommunications service within the state of Nebraska. The following parties filed petitions for formal intervention: Aliant Communications, Arapahoe Telephone, Benkelman Telephone, Blair Telephone, Cambridge Telephone, Clarks Telephone, Consolidated Telco, Consolidated Telephone, Cozad Telephone, Curtis Telephone, Diller Telephone, Great Plains Communications, Glenwood Telephone Membership Corporation, Hamilton Telecommunications, Henderson Cooperative Telephone, Hershey

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Cooperative Telephone Company, K & M Telephone, Keystone-Arthur Telephone, Nebraska Central Telephone, Nebraska Independent Telephone Association, Nebraska Telephone Association, Pierce Telephone, Plainview Telephone, Southeast Nebraska Telephone, Stanton Telephone, United Telephone Company of the West, and Wauneta Telephone. AT&T Communications filed a petition for informal intervention. An evidentiary hearing was held on April 9, 1997.

EVIDENCE

Michael Hydock, local competition manager, testified on behalf of MCImetro as follows:

MCImetro is a wholly-owned subsidiary of MCImetro, Inc. which in turn is a wholly-owned subsidiary of MCIT. MCIT is an interexchange carrier authorized to provide long distance service in Nebraska and across the United States.

MCImetro is certificated or has received regulatory authority as a competitive local exchange provider in 25 states and in all 25 states the appropriate regulatory body reviewed the managerial, technical, and financial qualifications of MCImetro before granting authority. Currently, MCImetro is offering competitive local exchange service in approximately 20 cities across the United States.

Initially, MCImetro will provide services through resale of local exchange telecommunications services of the incumbent or other competitive local exchange carriers; however, MCImetro will eventually become a facilities-based provider. The first area in Nebraska where MCImetro intends to provide service is Omaha. MCImetro's local network will consist of high reliability fiber rings using synchronous optical networks (SONET) technology, digital switches and special application computers, software and databases. It is MCImetro's intention to provide local telecommunications service throughout Nebraska. Some of the services MCImetro plans to provide are two way lines/trunks, direct inward/outward dialing options, local calling, operator-assisted services, directory assistance, dual party relay and 911 emergency services. Service will be provided to both residential and business customers.

MCImetro is capitalized by its parent corporations, which have posted revenue during the third quarter of \$4.69 billion, with \$304 million net income. Recently, MCI and British Telecommunications announced plans to merge, forming Concert

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Communications PLC. The proposed merger is not likely to change MCImetro's business plans.

MCImetro operates 61 local city networks in 34 cities across the United States and has installed a total of 24 Class 5 local switches. Furthermore, MCImetro's parent corporations have substantial experience in managing worldwide telecommunications services. MCImetro will support both federal and state Universal Service.

No other evidence was adduced.

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 primary purpose of the Act is to promote the development of competition in local exchange service markets. To implement this purpose, the Act requires incumbent local exchange carriers to resell their services to new entrants and to open their existing facilities under interconnection agreements which must be negotiated or arbitrated, and then 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. Section 253(a) provides:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

In 1986, the Legislature adopted a pro-competitive policy toward the provision of telecommunications services as set forth in Neb. Rev. Stat. § 86-801 (Reissue 1994) which provides:

The Legislature declares that it is the policy of the state to:

(1) Preserve affordable telecommunications services;

(2) Maintain and advance the efficiency and availability of telecommunications services;

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(3) Ensure that consumers pay only reasonable charges for telecommunications services; and

(4) Promote diversity in the supply of telecommunications services and products throughout the state.

This Commission finds that it should embrace and adopt the pro-competitive policies of the Federal Telecommunications Act of 1996. The Commission further finds that competition in the provision of local exchange service is likely to produce the following benefits: improved efficiency in the provision of services; accelerated deployment of technological innovations; improved customer service; innovative services to meet consumer needs; and choice of providers for consumers.

Ne. Rev. Stat. § 75-604 (1994 Cum. Supp.) is a barrier to entry and has been preempted by the Federal Telecommunications Act of 1996 to the extent that it requires that, before granting a certificate of convenience and necessity, the Commission must find one of the following three conditions to exist:

- (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 subscriber 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.

As it currently does when evaluating applications for certificates of authority to provide interLATA interexchange services, the Commission will consider applications, including

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MCImetro's application, for authority to provide local exchange service in light of 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) Pursuant to Section 253(b) of the Federal Telecommunications Act, 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.

These criteria (See Neb. Rev. Stat. § 86-805 (Reissue 1994)) are appropriate for both the interexchange market and the local exchange market. Section 75-604, on the other hand, includes criteria intended and appropriate only in a monopoly environment.

MCImetro has demonstrated that it meets and exceeds the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange service, both facilities-based and resale, in Nebraska. No performance bond is required.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide local exchange service. All telecommunications carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set out herein.

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

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- (a) MCImetro, either through negotiation or arbitration, must reach interconnection agreements with the incumbent local exchange carriers providing service in Nebraska;
- (b) The Commission must approve the various interconnection agreements; and
- (c) Prior to providing local exchange service in any area in the state of Nebraska, MCImetro 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.

This order does not terminate, waive or in any manner diminish the exemption and protections created by the Federal Telecommunications Act for rural carriers, as defined in the Federal Act. This order does not address the issue of the rural local exchange carriers' exemption under the Federal Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Federal Act.

As a provider of local exchange service in the state of Nebraska, MCImetro would be subject to the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service, restrictions on joint marketing and quality of service), 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-1474 be, and is hereby, granted.

IT IS FURTHER ORDERED that upon final approval of the interconnection agreements, MCImetro shall be granted authority to provide local exchange service, both on a resale basis and facilities basis, to the areas covered under the specific interconnection agreements. MCImetro need not make any further application to this Commission for authority to provide local exchange service in this state.

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IT IS FURTHER ORDERED that, before MCImetro is allowed to provide local exchange service to areas currently served by rural local exchange carriers, as defined by the Federal Telecommunications Act, that all of the requirements set forth in the Act must be evaluated.

IT IS FURTHER ORDERED that MCImetro is obligated to abide by the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service, restrictions on joint marketing and quality of service), 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 hereby is made, the Commission's official certificate of convenience and necessity to the applicant to provide local exchange service within Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of May, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller


Vice Chairman

ATTEST:


Executive Director