

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the application of) Application No. C-1913
Digital Teleport, Inc., St. Louis,)
Missouri, for Certificate of)
Authority to provide competitive) GRANTED
local exchange services and inter-)
LATA interexchange services in the)
state of Nebraska.) Entered: December 15, 1998

APPEARANCES:

For the Applicant:
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For the Commission:
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For Arapahoe Telephone Company;
Benkelman Telephone Company,
Inc.; Cozad Telephone Company;
Diller Telephone Company;
Hemingford Cooperative Telephone
Company; Henderson Cooperative
Telephone Company; and Wauneta
Telephone Company:
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BY THE COMMISSION:

By its Application filed September 29, 1998, Digital Teleport, Inc. (Applicant) seeks authority to obtain Certificate of Authority to provide telecommunication services as a competitive local exchange carrier and an interLATA, interexchange carrier in the state of Nebraska. Notice of the application appeared in The Daily Record on October 1, 1998. The following parties filed Petitions of Formal Intervention: Arapahoe Telephone Company, Benkelman Telephone Company, Inc.; Cozad Telephone Company; Diller Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; Wauneta Telephone Company; The Nebraska Independent Telephone Association; Cambridge Telephone Co.; Clarks Telecommunications Co.; Consolidated Telco, Inc.; Great Plains Communications; HunTel Systems, Inc.; and

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Southeast Nebraska Telephone Co. (collectively referred to hereafter as the Intervenor). A hearing was held November 30, 1998, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its Application, Applicant produced one witness, Terry J. Romine, Vice President, Legal Affairs - Regulatory, who testified as follows:

Ms. Romine testified that the Applicant is a corporation organized and in good standing under the laws of the state of Missouri, authorized to do business in the state of Nebraska, and is a wholly-owned subsidiary of DTI Holdings, Inc. Ms. Romine testified that the Applicant is a facilities-based competitive telecommunications provider, holding certificates of authority in the states of Illinois, Arkansas, Kansas, Missouri, Iowa and Texas.

Ms. Romine further testified that the Applicant has the financial capability to develop and construct its proposed Nebraska network and to provide local exchange, interexchange and private line services within the requested service areas, as demonstrated by the Consolidated Financial Statements provided to the Commission as Exhibit F-1 to its Application and the Form 10-Q for the period ending September 30, 1998, submitted to the Securities and Exchange Commission and presented as Exhibit B to Ms. Romine's Direct Testimony.

Ms. Romine also presented testimony showing the Applicant's managerial competence. Applicant's management has over a century's worth of combined experience in the telecommunications industry, with additional expertise in finance and marketing.

Ms. Romine testified that the Applicant possesses the technical competence and resources to provide the services proposed in the Application. Applicant has attracted personnel with extensive experience in the telecommunications industry, including experience in network design and construction, network operations, and sales and marketing. Applicant's technical personnel have designed and constructed approximately 1,800 route miles of digital fiber optic cable on which Applicant provides carrier-to-carrier service under contract with other telecommunications companies and private line service to targeted business and government end-users. The personnel have also installed and operate a Nortel DM5-500 switch in St. Louis, Missouri.

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Ms. Romine testified that the Applicant will use its existing direct sales personnel to contact potential customers; it will not employ telemarketing agents or firms. Applicant will require written confirmation from the customer prior to commencement of service. Applicant's sales and service division is headquartered in St. Louis, and the division's 800 number will be printed on customer monthly billing statements.

Ms. Romine further testified that the granting of the Application will be in the public interest. The addition of an alternative provider in the areas Applicant proposes to serve will promote the national policies set forth in the Telecommunications Act of 1996 (the Act), and advance the objectives of the Commission set forth in its Progression Order dated December 19, 1995, in Application No. C-1128 relating to the implementation of local exchange competition. Applicant's provision of competitive local exchange service, including interexchange services, will enhance the universal service concept by offering customers a choice between service providers, with the likely result, according to Ms. Romine, of additional rate options, more economical switched services, customer calling features and billing enhancements. Ms. Romine testified that operations such as the Applicant's, which do not involve the incumbent local exchange carriers (ILECs), are able offer more service options to the customer with alternate rate structures not dependent on ILEC rates, thus reducing customer costs.

No other parties introduced testimony or evidence at the hearing.

The Applicant and the Intervenors have filed a Stipulation agreeing to certain language to be incorporated into this order. Additionally, in the Stipulations, the Intervenors state that they "will not oppose this Application" though they reserve certain rights to contest further applications of the Applicant.

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

The Commission considers this Application for authority in light of the following criteria and standards established in the Commission's telecommunications rules:

- (a) Whether the Applicant has provided the information required by the Commission;

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- (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, ensures the continued quality of telecommunications services and safeguards the rights of consumers, pursuant to Section 253(b) of the Act.

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange service and interLATA interexchange service in Nebraska in the territory presently served by US West Communications, Inc. (US West) and Aliant Communications Co. (Aliant).

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 in the above-mentioned territories. All telecommunications carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set forth herein.

Before the Applicant is allowed to provide local exchange service to its users, it must:

- (a) Through negotiation or arbitration reach an interconnection/resale agreement with the pertinent incumbent local exchange carrier and receive Commission approval of the interconnection/resale agreement; and
- (b) File with the Commission, and receive Commission approval of, a tariff in accordance with the provisions of Section 002.21 of Neb. Admin. R. & Regs. Tit. 291, Ch. 5.

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

Prior to providing local exchange service or intrastate, interLATA interexchange service in any area in the state of Nebraska, Applicant must file, and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of the Neb. Admin. R. & Regs. Tit. 291, Ch.5.

As a provider of local exchange service in the state of Nebraska, Applicant 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 ILECs pursuant to Section 251(c) of the Act.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-1913 be, and it is hereby, granted.

IT IS FURTHER ORDERED that upon final approval of the inter-connection/resale agreements, Applicant is granted authority to provide local exchange service to the area presently served by US West and Aliant.

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

IT IS FURTHER ORDERED that Applicant 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 ILECs pursuant to Section 251(c) of the Act.

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IT IS FURTHER ORDERED that Applicant shall collect from its subscribers a surcharge (Relay Surcharge) pursuant to the Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-1302 - 86-1306, (Relay Act) and the Commission's annual orders establishing the amount of the Relay Surcharge and shall remit to the Commission the proceeds from the Relay Surcharge, as provided by the Relay Act.

IT IS FINALLY ORDERED that this order be and hereby, is made the Commission's official Certificate of Authority to the Applicant to provide local exchange service and interLATA interexchange service within Nebraska in the area presently served by US West and Aliant.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of December, 1998.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Anne C. Boyle

//s//Lowell C. Johnson
//s//Frank E. Landis

Lowell C. Johnson
Chairman

ATTEST:

Robert A. Logsdon
Executive Director