

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Tracy Corporation,) Application No. C-1968
Scottsbluff, Nebraska, seeking)
authority to amend its Certificate)
of Public Convenience and Neces-) GRANTED
sity to provide local exchange)
service throughout the entire)
state of Nebraska.) Entered: April 14, 1999

APPEARANCES:

For the Applicant:

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La Vista, NE 68128

For the Commission:

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Lincoln, NE 68508

Intervenors:

For Arapahoe Telephone Com-
pay; Benkelman Telephone
Company, Inc.; Cozad Telephone
Company; Diller Telephone Co.;
Hemingford Cooperative
Telephone Company; Henderson
Cooperative Telephone Company;
and Wauneta Telephone Company:
Timothy F. Clare
Rembolt, Ludtke, Berger
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For the Nebraska Telephone
Association:

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P.O. Box 82028
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For Consolidated Telco Inc.;
Consolidated Telephone Com-
pay; and the Nebraska Inde-
pendent Telephone Association:

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Application No. C-1968

PAGE 2

BY THE COMMISSION:

By its application filed December 29, 1998, Tracy Corporation II (Tracy Co. or Applicant) seeks an amendment to its Certificate of Public Convenience and Necessity to be authorized to offer and provide local exchange telecommunication services throughout the entire state of Nebraska. Notice of the application appeared in The Daily Record on January 6, 1999, pursuant to the Rules of the Commission. The following parties filed Petitions of Formal Intervention: Nebraska Telephone Association; Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Diller Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; Wauneta Telephone Company; Consolidated Telco, Inc.; Consolidated Telephone Company; and, the Nebraska Independent Telephone Association (collectively, hereinafter "the Intervenor"). A hearing was held on March 30, 1999, in the Commission Hearing Room, Lincoln, Nebraska, on the Applicant's request with appearances as noted above.

Tracy Co. was granted authority by this Commission to operate as a competitive local exchange carrier of telecommunication services within the areas currently served by US West Communications, Inc., Aliant Communications, GTE and Sprint. The authority was granted on December 22, 1998, pursuant to Application No. C-1907. The Commission took judicial notice of the information submitted in Application No. C-1907 upon Applicant's motion during the hearing. The motion was granted without objection.

Tracy Co. is a privately-held corporation providing wireless telecommunications services with facilities and employees in the state. Applicant has been providing paging service for over 16 years. During the hearing, Mr. Michael Tracy, president of Tracy Co., testified that the company will employ wireless digital services and will target residences and small businesses. The company will not offer operator services but will offer 911 and E911 and relay services. The company will subject itself to the laws, rules and regulations regarding universal service. The company will provide customer assistance, and billing will be provided through another company.

Mr. Tracy further testified that the application is in the public interest by providing a competitive environment and offering access to new technology.

Upon cross-examination, Mr. Tracy indicated that currently Applicant offers wireless service through an FCC-granted license which was limited to the BTA 411 region. The company holds additional licenses from the FCC as well.

Mr. Tracy testified that the company has all the same managerial, financial and technological competencies that existed when Applicant was granted its limited authority in December 1998. In addition, he testified that the company has spent over \$2 million in research and development of new technologies over the past two years. Applicant testified that while he did not believe that the Commission had authority over wireless communication, technology developments in the area had blurred the lines of distinction between wireless and wire providers of service. Accordingly, he desired to operate as a competitive local exchange carrier in order to avoid any potential legal problems in the future. He expressed concern that as a wireless provider using mobile technology, there might be some legal concerns when the provisioning of services might be connected to a land-line end user.

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;
- (b) Whether the Applicant has provided a performance bond, if required;
- (c) Whether the Applicant possesses adequate financial resources to provide the proposed services;
- (d) Whether the Applicant possesses adequate technical competence and resources to provide the proposed service;

Application No. C-1968

PAGE 4

- (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 the rights of consumers, pursuant to Section 253 (b) of the Telecommunications Act of 1996.

From the outset, the Commission notes it has, through judicial notice, incorporated the findings of this Commission made just over three months ago which ruled that the Applicant has demonstrated that it meets the standards of financial, technical and managerial experience and the other criteria necessary to provide service in the areas now represented by US West, GTE, and Sprint (see order in Application No. C-1907, December 22, 1998).

The question more squarely before the Commission is not whether the Applicant has met the criteria to operate according to its application, but whether this Commission should grant statewide authority notwithstanding the provisions of Section 251 (f) (1) (A) of the Federal Telecommunications Act of 1996 relating to the exemption for rural incumbent local exchange carriers (ILECs).

It is important to note that the application before us, while it is a request for statewide authority, does not rise to the level of a "bona fide request for interconnection, services, or network elements." Such a request would clearly be governed by the above noted provisions of the Federal Telecommunications Act of 1996. But the mere granting of statewide authority falls short of the governance of the Act. In any case, a bona fide request would fall under Section 251 (f) (1) (B) and would require an independent determination by the Commission that "the request was not unduly economically burdensome, (was) technically feasible, and (was) consistent with section 254 (of the Act)."

This order is not intended to predict or presume the outcome of a request that may or may not be placed before this Commission. This Commission will make an independent determination on a bona fide request for interconnection only when that issue is ripe for consideration.

Application No. C-1968

PAGE 5

Mr. Tracy, testifying for the application, correctly points out that this Commission has previously granted statewide authority. Such statewide authority was granted to AT&T in October 1996 (Application No. C-1298), to MCI Communications in May 1997 (Application No. C-1474), and to WorldCom in December 1997 (Application No. C-1631). Counsel for the Intervenor contend through their line of cross-examination that such statewide authority is not needed if its use is not imminent. But this Commission has, in the past, granted statewide authority absent any indications of its intended use by the successful applicants. Our order today conforms with past practice.

The Commission, therefore, is of the opinion and finds that Application No. C-1968 should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1968 be, and it is hereby, granted.

IT IS FURTHER ORDERED that the Applicant comply with Section 251 (f)(1)(B) of the Federal Telecommunications Act and that the Applicant submit any bona fide request(s) for interconnection, services, or network elements from a rural telephone company to the Commission for its approval.

IT IS FURTHER ORDERED that the 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 for obligations imposed on incumbent local exchange carriers pursuant to Section 251 (c) of the Act.

IT IS FURTHER ORDERED that, to the extent the Applicant provides access line service as referenced in the Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-1302 through 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. tit. 291, ch. 5. § 001.01B, the Applicant shall collect from its subscribers a surcharge (Relay Surcharge) pursuant to the Relay Act and the Commission's annual orders establishing the amount of the relay

Application No. C-1968

PAGE 6

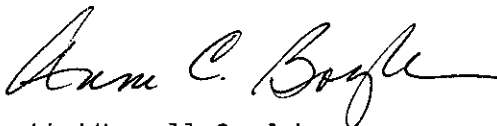
surcharge, and shall remit to the Commission the proceeds from the relay surcharge, as provided by the Relay Act.

IT IS FURTHER ORDERED that the Applicant comply with all necessary statutes and Commission rules and regulations as they pertain to the Nebraska Universal Service Fund.

MADE AND ENTERED in Lincoln, Nebraska, on this 14th day of April, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



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


Chairman

ATTEST:


Executive Director