

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Aliant Midwest,) Application No. C-2012
Lincoln, seeking to enlarge its)
Certificate of Public Convenience)
and Necessity to provide local ex-) GRANTED
change service as an in-region)
CLEC in areas of Nebraska served)
by Aliant Communications Company.) Entered: May 26, 1999

BY THE COMMISSION:

By its application filed March 9, 1999, Aliant Midwest, Inc. dba Aliant Communications (Applicant or Aliant Midwest) seeks to enlarge its Certificate of Public Convenience and Necessity to provide local exchange service as an in-region CLEC in areas of Nebraska served by Aliant Communications Co. Notice of the application appeared in The Daily Record, Omaha, Nebraska, on March 11, 1999, pursuant to the rules of the Commission. A petition of informal intervention was filed by the Nebraska Independent Telephone Association (NITA). A petition of formal intervention was filed by Nebraska Technology & Telecommunications, Inc. (NT&T) (collectively, Intervenor). A hearing was held on May 12, 1999, in the Commission Hearing Room, Lincoln, Nebraska. Appearing for the applicant was Paul Schudel, Woods & Aitken Law Firm, 206 S. 13th Street, Suite 1500, Lincoln, Nebraska, 68508. Appearing for NT&T was Timothy F. Clare, Rembolt, Ludtke & Berger, 1201 Lincoln Mall, Suite 102, Lincoln, Nebraska, 68508. Appearing for the Commission was Michael T. Loeffler.

Brad S. Hedrick of Aliant Midwest testified that Aliant Midwest and Aliant Communications Company are both wholly-owned subsidiaries of Aliant Communications, Inc. and that Aliant Communications Company has no ownership interest in Aliant Midwest. Aliant Midwest is currently providing business and residential local exchange services in the Omaha and Grand Island markets. Mr. Hedrick further testified that Aliant Midwest is applying to expand its landline local exchange service in the area served by Aliant Communications Company in order to be on equal footing with other certified carriers with statewide authority. Aliant Midwest also wishes to interconnect with Aliant Communications Company for the termination of telecommunications traffic.

Mr. Hedrick testified that Aliant Midwest would likely enter into arm's length contracts with its affiliates for certain products and services. As proof of Aliant Midwest's technical and

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managerial competence, Mr. Hedrick referred to such findings of competence made in Application Nos. C-1440 and C-1775 filed previously with the Commission.

Aliant Midwest proposes to offer facilities-based services through the use of a DMS-500 switch located in west Omaha and DS-1 and DS-3 circuits leased from TCG Omaha and US West Communications, Inc. In addition, Aliant Midwest operates fiber systems in Omaha and Grand Island and is currently constructing fiber facilities in Omaha, Grand Island and Kearney. Aliant Midwest has entered into interconnection agreements with US West Communications and GTE Midwest, Inc. Aliant Midwest plans to request interconnection with Sprint/United and Aliant Communications Company.

Mr. Hedrick then testified in regard to meeting the requirements imposed by the Commission for in-region CLEC authority as prescribed in Application No. C-1839. Aliant Midwest seeks certification only to provide local exchange service to multi-location customers with locations inside and outside of Aliant Communications Company's service territory. Mr. Hedrick further testified that Aliant Midwest is a Nebraska corporation with a separate legal existence from Aliant Communications Company.

Commission-approved interconnection agreements exist which Aliant Midwest can adopt pursuant to Section 252(i) of the Telecommunications Act of 1996. Aliant Midwest will provide its own facilities for in-region CLEC service except as provided in accordance with these interconnection agreements.

Aliant Midwest will not receive more favorable or discriminatory provision of telecommunications services from Aliant Communications Company as compared to a non-affiliate. Prior to entering a service agreement with a customer, Aliant Midwest will inform that customer that she or he will not be served by Aliant Communications Company and that the end user may purchase local service from Aliant Midwest or another local service provider.

Aliant Midwest will not use proprietary network information in the possession of Aliant Communications Company except to the extent permitted by the FCC *Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-115 and 96-149.

Mr. Hedrick further testified that granting the application would serve the public interest by preserving universal service,

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protecting public safety, ensuring quality communication services and safeguarding the rights of consumers.

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

On December 15, 1998, this Commission entered an order in Docket No. C-1839/PI-22 (hereinafter C-1839) in which the Commission held that:

1. The Commission was the proper regulatory body to determine the extent to which an affiliated in-region CLEC should be permitted to compete in the markets served by the affiliated ILEC;
2. Properly conditioned, affiliated in-region CLEC competition could foster a competitive market, promote telecommunications services, and reduce service costs for customers;
3. Upon a finding by the Commission that competition exists in the affiliated ILEC's service area, an affiliated CLEC could operate in the ILEC's service area on a basis comparable to an unaffiliated CLEC; and
4. Absent a finding that competition existed in an ILEC's service area, an affiliated CLEC could still be granted an authority to operate in its affiliated ILEC's service territory upon adherence to the conditions set out in a seven-point checklist.

Aliant Midwest seeks authority to operate in its affiliated ILEC's service area through a showing that each of the seven points in the checklist in C-1839 has been satisfied. Aliant Midwest makes no claim, nor do we find here, that competition exists in the ILEC service area of Aliant Communications Company. That issue is not before us. Aliant Midwest asks the Commission to determine that it has met each of the seven-point checklist items in C-1839. We address those individually.

Checklist Item 1 - Separate legal existence. Pursuant to C-1839, Aliant Midwest must show that it is a separate legal entity from Aliant Communications Company. Intervenors argued at the hearing that some question of the independence of the two companies from each other exists because both Aliant Midwest and Aliant

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Communications Company share some of the same members on their respective Board of Directors. However, while there is some commonality, there is enough disparity in the membership of the two Boards to ensure that each is a separate legal entity.

Checklist Item 2 - Existence of an interconnection agreement. An interconnection agreement between Aliant Communications Company and US West Communications was executed on December 7, 1998, and approved by this Commission on February 17, 1999. Pursuant to Section 252(i) of the Federal Telecommunications Act of 1996, this agreement may be adopted by Aliant Midwest. This fulfills this checklist item.

Checklist Item 3 - CLEC to provide its own facilities. Aliant Midwest has stated in its application that it will provide its own facilities except as provided by the adopted interconnection agreement.

Checklist Item 4 - Data and documents to be provided upon request. Through its application, Aliant Midwest agrees to submit to the Commission any documents, data, and other records as requested by the Commission. Aliant Midwest cannot, as provided in C-1839, provide Aliant Communications Company's agreement to provide requested documents, data and records. While the Commission does not expect non-compliance upon the submission of any request, it does note, for the record, that such non-compliance could put this authority in jeopardy.

Checklist Item 5 - Affiliated ILEC shall not discriminate in favor of affiliated CLEC. The Commission again notes that the applicant cannot ensure the actions of a third party, i.e., the ILEC. The Commission does put applicant on notice that in the event the ILEC (Aliant Communications Company) discriminates in favor of the applicant, the Commission may revoke the authority granted herein.

Checklist Item 6 - CLEC to inform end-user. The applicant agrees that this grant of authority is conditional upon the applicant informing an end-user prior to entering into a service agreement that the affiliated ILEC will no longer be the end user's provider and that the end user may purchase local service from either the affiliate or another local service provider.

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Checklist Item 7 - Prohibition against using the proprietary network information of the ILEC. Applicant has agreed that it will not use any customer proprietary network information associated with or attributable to the affiliated ILEC's provision of services except as provided by FCC CC Docket Nos. 96-115 and 96-149 (1998).

The Commission finds that the applicant must have continuing compliance with each of the checklist items originating in C-1839. Further, the Commission finds that it has the power, upon notice and hearing, to revoke the applicant's authority to compete in its affiliated ILEC's service area in the event that either the ILEC or CLEC fails to abide by any or all of the conditions set forth herein, or as provided in C-1839, or upon demonstration that either the ILEC or CLEC has engaged in anti-competitive conduct.

O R D E R

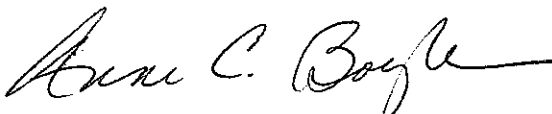
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2012 be, and it is hereby, granted and that Aliant Midwest be given authority to enlarge its Certificate of Public Convenience and Necessity to provide local exchange services as an in-region CLEC in areas of Nebraska served by Aliant Communications Company.

IT IS FURTHER ORDERED that the applicant operate pursuant to the conditions provided herein and as set forth in Docket No. C-1839/PI-22 issued by the Commission December 15, 1998.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of May, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

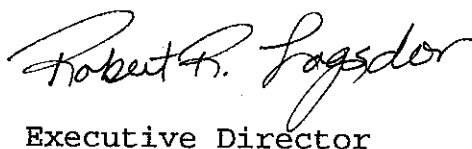
COMMISSIONERS CONCURRING:



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


Chairman

ATTEST:


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
