

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-2038
Application of Cable USA,)	
Inc., to expand its certificate)	
of authority (C-1869) to)	GRANTED
provide local exchange)	
telecommunications services)	
in the state of Nebraska.)	Entered: August 3, 1999

APPEARANCES:

For the Applicant:	For Arapahoe Telephone Company;
Andrew S. Pollock	Benkelman Telephone Company,
Brooks, Pansing, Brooks, P.C. Inc.;	Cozad Telephone
1248 "O" Street, Suite 984	Company;
Lincoln, Nebraska 68508-1424	Diller Telephone Company;
	Hemingford Cooperative
For the Commission:	Telephone Company; Henderson
Chris Post	Cooperative Telephone
Kevin Griess	Company;
300 The Atrium	and Wauneta Telephone
1200 "N" Street	Company:
Lincoln, Nebraska 68508	
	Mark A. Fahleson
	Rembolt, Ludtke & Berger
	1201 Lincoln Mall, Suite 102
	Lincoln, Nebraska 68508

BY THE COMMISSION:

By its application, filed April 23, 1999, Cable USA, Inc. (Cable USA or the Applicant) seeks authority to expand its certificate to provide local exchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on April 27, 1999. 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; and Wauneta Telephone Company (collectively referred to hereafter as the Intervenors). A hearing on the application was held July 13, 1999, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, Gregory P. Babbitt, a Cable USA Vice President, who testified as follows:

The applicant, with central offices located in Kearney, Nebraska, is applying for an expansion of its authority to provide local exchange services. Presently, the applicant is certified to provide such services in the territories presently served by US West Communications, Inc. (US West), GTE Midwest, Incorporated (GTE and Aliant Communications Co. (Aliant)). That certificate was granted in

the proceeding before this Commission in Application No. C-1869. The application filed in the present proceeding seeks statewide authority.

Since receiving authority under the C-1869 order, Cable USA has: (i) Adopted, pursuant to Section 252(i) of the Act, the AT&T; interconnection agreement with incumbent US West, which agreement was approved by the Commission on February 2, 1999, in the proceeding docketed No. C-1976; (ii) adopted, pursuant of Section 252(i), the AT&T; interconnection agreement with incumbent GTE, which agreement was approved by the Commission on April 20, 1999, in the proceeding docketed No. C-2028; and negotiated a supplemental interconnection agreement with GTE, which agreement was approved by the Commission on May 12, 1999, in the proceeding docketed No. C-2027; and (iii) commenced negotiations with Aliant by serving upon Aliant a bona fide request for interconnection and engaging in subsequent negotiations with Aliant.

Mr. Babbitt emphasized that Cable USA's application is not, and should not be construed as, a bona fide request for interconnection with any carrier. Cable USA understands that before providing telecommunications service in any incumbent local exchange carrier's (ILEC) territory, it must reach an interconnection agreement with the respective ILEC and that each interconnection agreement, whether negotiated or arbitrated, must be approved by the Commission. Moreover, Cable USA is not asking the Commission, as part of this application, to make any decision about the rural exemption status of any Nebraska ILEC.

Since the Commission entered its order in Docket No. C-1869, granting Cable USA authority to provide local exchange service in territories presently served by US West, GTE and Aliant, Cable USA has approved preliminary and informal plans to extend its local exchange services throughout the state of Nebraska. Cable USA presently intends to provide local exchange services on a statewide basis.

Cable USA plans to provide basic local exchange service through a combination of resale and facilities-based service, including service provided utilizing unbundled network elements leased from ILECs, interconnection of Cable USA facilities and systems with the facilities and systems of ILECs and collocation of Cable USA facilities in the central offices and other facilities of ILECs. Cable USA's proposed network will consist of fiber backbone facilities used to provide switched, special access and enhanced data telecommunications services. The fiber backbone Cable USA will utilize is owned and operated by F & S Fiber Systems, L.L.C. (F & S Fiber), an affiliate of Cable USA. F & S Fiber is a distance learning and Internet access provider, which received authority from the Commission on July 8, 1999, in Application No. C-2046, to provide intrastate interexchange telecommunications services to specific entities on a statewide basis. Cable USA intends to provide local exchange services to residential and business customers.

Cable USA is financially qualified to provide basic local exchange services in Nebraska. Copies of Cable USA's annual financial statements for 1995, 1996 and 1997, including balance sheets and profit and loss statements, were provided to the Commission as part of Cable USA's evidence in the proceeding on Application No. C-1869.

Additionally, the applicant submitted in the present proceeding its audited 1998 financial statements.

This Commission found that Cable USA met the standards of technical and managerial competence necessary to provide local exchange service in its order granting Application No. C-1869. Since that order was entered, there have been no material changes or developments that would adversely change or alter the managerial and technical resources and abilities of Cable USA. Cable USA has the managerial and technical resources sufficient to provide local exchange services in Nebraska.

According to Mr. Babbitt, the addition of an alternative provider in the state -- especially areas beyond US West and GTE territories, where many competitive local exchange carriers (CLECs) have been certified -- will promote the national policies set forth in the Telecommunications Act of 1996, 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. Cable USA's provision of competitive local exchange service will enhance the universal service concept by offering customers a choice between service providers, helping to secure the most affordable prices and highest quality services. Competition will also serve to protect the public safety and welfare, and will ensure the continuous quality of telecommunications services. New products and services are much more likely to develop in a competitive environment, and carriers have an economic incentive to reduce costs and develop more efficient service provision.

On cross-examination by Mr. Fahleson, Mr. Babbitt testified that Cable USA is not presently providing local exchange service in Nebraska and that when Cable USA does provide service it will do so on both a resale and a facilities basis. Facilities-based service will initially be rolled out in Kearney, Nebraska. Cable USA has offices in Kearney, Grand Island, Omaha and Scottsbluff, and employs approximately 100 persons, including 10 employees who handle the telecommunications operations of Cable USA and its affiliates. Mr. Babbitt also said that while Cable USA intends to provide statewide service, it has no immediate plans to serve any areas presently served by the intervenors which Mr. Fahleson represents.

In response to questions by Mr. Griess, Mr. Babbitt testified that Cable USA will comply with the Commission's Nebraska Universal Service Fund (NUSF) regulations and is capable of exempting Lifeline customers from the NUSF surcharge.

Mr. Babbitt testified to questions by the Commissioners that Cable USA intended to begin offering local exchange services in the Kearney and Grand Island areas in the next five weeks. Cable USA intends to provide service in Omaha and intends to provide residential service. Cable USA stands committed to the NUSF concept and has already been working with Commission staff in that regard.

No other parties introduced testimony or evidence at the hearing.

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 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 throughout the state of Nebraska. No evidence was submitted or testimony elicited to suggest that the applicant is not qualified to provide its proposed services in light of the criteria this Commission must consider.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2038 should be granted on a statewide basis.

O R D E R

IT IS THEREFORE ORDERED by the Commission that application No. C-2038 be, and it is hereby, granted and Cable USA, Inc. is authorized to expand its certificate to provide local exchange telecommunications services in the state of Nebraska.

IT IS FURTHER ORDERED that the applicant comply with Section 251(f)(1)(B) of the Telecommunications Act of 1996 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 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

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 - 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 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.

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 Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of August, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

COMMISSIONERS DISSENTING:

Executive Director

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