

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-2060
Tin Can Communications Company,)
L.L.C., d/b/a the Cube, Houston,)
Texas, seeking authority to obtain)
a Certificate of Public Convenience) GRANTED
and Necessity to provide local ex-)
change telecommunications services)
within the state of Nebraska.) Entered: March 14, 2000

APPEARANCES:

For the Applicant: For Arapahoe Telephone Company;
Andrew S. Pollock
Benkelman Telephone Company;
Brooks, Pansing Brooks, P.C.
Cozad Telephone Company; Diller
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For the Commission:
Company; and Wauneta Telephone
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BY THE COMMISSION:

By its application filed June 8, 1999, Tin Can Communications Company, L.L.C., d/b/a the Cube (Applicant) seeks authority to provide local exchange and interexchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on June 9, 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; Wauneta Telephone Company; Consolidated Telco, Inc.; Consolidated Telephone Company; and the Nebraska Independent Telephone Association (collectively referred to hereafter as the Intervenor). The Nebraska Telephone Association filed a petition for formal intervention, but later withdrew that petition. A hearing on the application was held November 4, 1999, in the Commission Library, Lincoln, Nebraska, with

appearances as shown above.

E V I D E N C E

In support of its application, the applicant produced one witness, James T. Mahan, General Manager of the applicant, who testified as follows:

Mr. Mahan, the General Manager and CEO of applicant, testified that the applicant is a privately-held Texas limited liability company and has its headquarters in Houston, Texas. Applicant has obtained authority to transact business in the state of Nebraska and currently provides resold services in Texas, Arkansas, Kansas, Missouri and Oklahoma.

Originally, the applicant applied for statewide authority. By stipulation with the intervenors, the applicant has agreed to limit its authority to the territories currently served by Aliant Communications Co., d/b/a ALLTEL (ALLTEL), GTE Midwest Incorporated (GTE), United Telephone Company of the West (Sprint) and US West Communications, Inc. (US West).

Mr. Mahan testified that applicant proposes to provide local service on a prepaid basis. The applicant will engage in mass advertising to notify Nebraska residents that its services are available. No direct sales force will be utilized. Interested customers will pay up-front the cost of the local service plus the applicable installation charges. It is the applicant's intent that its customers will not be allowed to incur any usage sensitive charges on the resold local line.

Mr. Mahan testified that the applicant has sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. The applicant's management team is composed of individuals that have many years of combined managerial and business experience. Mr. Mahan also presented testimony showing that the applicant has sufficient financial resources to implement and provision its local exchange telecommunications services in its proposed service territory. The applicant's financial statements were attached as Exhibit D to the application. Mr. Mahan testified that these financial reports demonstrate that applicant has the capital necessary to provide the proposed telecommunications services.

Mr. Mahan further testified that granting the application will

promote the public interest by providing consumers a choice in providers. Consumers will not have to purchase the applicant's services since it is not the carrier of last resort. The applicant proposes to provide flat-rated basic local exchange services in a manner that is different from that of the incumbent local exchange carriers (ILECs). The applicant's provisioning of service will enhance the goals of universal service, promote the policies set forth in the Telecommunications Act of 1996 (the Act), and advance the objective of the Commission which are set forth in Application No. C-1128, Progression Order, dated December 19, 1995, relating to the implementation of local exchange competition.

Mr. Mahan testified that customers may inquire about bills through a toll-free number during regular business hours. Customers will have access to the operator services as well as 911 services through the existing ILECs. Applicant will contract with ILECs to provide customers with directory listings and for the distribution of directories.

Mr. Mahan confirmed that the applicant is committed to the statement it made in the stipulation filed herein, limiting its request for authority to the territories presently served by ALLTEL, GTE, Sprint and US West. Mr. Mahan also confirmed that the applicant would not expand its territory without first filing a separate application with the Commission requesting authority to do so.

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 in the state of Nebraska in the territories presently served by ALLTEL, GTE, Sprint and US West. No party in this proceeding refuted the applicant's competence.

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 either:

(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; or

(b) In the event a certified local exchange carrier provides a wholesale tariff, purchase rates from that tariff, file its own tariff and receive Commission approval of its tariff.

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 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 Nebraska Public Service Commission that Application No. C-2060 be, and is hereby, granted.

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 FURTHER ORDERED that applicant shall file, in accordance

with the applicable statutes, on or before April 30 of each year, an annual report with this Commission consisting of: (a) a copy of any report filed with the Federal Communications Commission; (b) a copy of any annual report to stockholders; and (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission. If such reports are unavailable, applicant shall file a balance sheet and income statement for the previous year of operation, and for the state of Nebraska on a combined interstate-intrastate basis, the investment in the telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that within 30 days from the entry of this order that the applicant file a tariff with the Commission as required by state statutes and the Commission's regulations.

IT IS FINALLY ORDERED that this order be, and hereby, is made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide local exchange telecommunications services in the Nebraska territories presently served by ALLTEL, GTE, Sprint and US West.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of March, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

ATTEST:

Executive Director

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