

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the amended)	Application No. C-2124
application of US West Commu-)	
nications, Inc., Denver, Colo-)	
rado, and Citizens Telecommu-)	
nications Company of Nebraska,)	
Stamford, Connecticut, seeking)	
authority for approval of the)	
sale of and for the issuance)	
of the required Certificate of)	FINDINGS AND CONCLUSIONS
Public Convenience and Neces-)	
sity to operate Ainsworth, At-)	
lanta, Emerson, Farwell,)	
Howells, Humphrey-Creston,)	
Oxford, Pilger, Randolph,)	
Silver Creek, St. Libory and)	
Valentine exchanges to also)	
include the Atkinson and)	
O'Neill exchanges.)	Entered: May 10, 2000

APPEARANCES:

Citizens Telecommunications
Company of Nebraska:
Paul M. Schudel
Woods & Aitken
206 South 13th St.
Suite 1500
Lincoln, NE 68508

Commission Staff:
Mike Loeffler
300 The Atrium
P.O. Box 94927
1200 N St.
Lincoln, NE 68509-4927

US West Communications, Inc.:
Phil Roselli
US West Law Department
1801 California St., Suite 5100

Denver, CO 80202
And
Paul Hybel
Freeborn & Peters
311 S. Wacker Drive, Suite 300
Chicago, IL 60606-6677

BY THE COMMISSION:

By joint application filed September 21, 1999, and an amended joint application filed February 28, 2000, US West Communications, Inc. (US West) and Citizens Telecommunications Company of Nebraska (Citizens) seek approval of the purchase by Citizens from US West of 14 of US West's Nebraska telephone exchanges, as identified in the caption of this application, and assets associated therewith (the Exchanges), issuance of a certificate of convenience and necessity to Citizens to provide basic local exchange service and intraLATA interexchange service to customers located in the exchanges, issuance of a statement of non-objection by the Commission to the grant of study area waivers by the Federal

Communications Commission (FCC) and grant to Citizens of eligible telecommunications carrier (ETC) status pursuant to 47 U.S.C. section 214(c).

Notice of the filing of the joint application was published in the The Daily Record on September 23, 1999, and notice of the filing of the amended joint application was similarly published on March 1, 2000, both pursuant to the Rules of the Commission, and a letter of notification was provided to interested parties on April 12, 2000.

A protest of the joint application was filed by AT&T Communications of the Midwest, Inc. and AT&T Local Services (together AT&T) on October 25, 1999. A prehearing conference order was entered in this matter on March 28, 2000, which addressed a number of procedural matters relating to this docket and also approved a stipulation entered among AT&T, Citizens, the Nebraska Universal Service Fund and the Communications Department of the Commission. Based upon the terms of the stipulation, AT&T filed a motion to withdraw its protest on April 4, 2000.

A public hearing on the amended joint application was held on April 11, 2000 in Lincoln, Nebraska. Appearances were as shown above.

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

1. The Commission finds that US West is a common carrier currently engaged in the provision of telecommunications services in Nebraska and is subject to the jurisdiction of this Commission. Citizens is not now engaged in the provision of telecommunications services in Nebraska. However, this Commission granted Citizens a certificate of public convenience and necessity to operate as an incumbent local exchange carrier in this state in Application No. C-2148 on April 5, 2000. Citizens seeks certification to expand the provision of such services under the jurisdiction of this Commission upon the closing of the purchase of the Exchanges from US West.

2. On June 16, 1999, US West and Citizens Utilities Company (CUC) entered into an agreement for the purchase and sale of telephone assets pertaining to the exchanges (the Agreement). On February 4, 2000, US West and CUC entered into a letter agreement amending the terms of the agreement. True and correct copies of the agreement and the letter agreement have been provided to the Commission on a proprietary and confidential basis for review by the Commission and its staff. Pursuant to the terms of the agreement, as amended, CUC will assign its rights thereunder to Citizens prior to closing the purchase of the exchanges.

3. In accordance with the terms of the agreement, as amended, US West proposes to sell and transfer control of the exchanges to CUC. The transaction described in the agreement, as amended, has received the necessary corporate approvals of US West

and CUC.

4. Mr. Robert G. Lanphier, Director-State Market Strategies, Nebraska of US West, appeared before the Commission and testified in this matter. Mr. Lanphier identified the exchanges that were identified for sale after evaluation of several factors, and the number of access lines in each of the exchanges as of December 31, 1999. He stated that US West's decision to sell the exchanges was caused by technology and regulatory changes and competition in all areas of US West's business. Sale of the exchanges is intended to allow US West to focus its resources on its remaining Nebraska customers. Mr. Lanphier described the process used by US West to select a buyer for the exchanges. CUC was selected based upon its financial, managerial and operational resources, its ability to deliver quality service to customers, its experience in integrating purchased properties into its operations and the purchase price and terms and conditions of the agreement, as amended. Mr. Lanphier offered his opinion that the sale of the exchanges is of advantage to the persons served in the exchanges and is in the public interest. He testified that Citizens has committed to maintain US West's intrastate rates for at least six months following closing, that 911 or E-911 services will be unchanged and that existing EAS routes will be maintained. US West has appointed a manager to coordinate the transition of facilities and customers to Citizens and has, and will continue to keep customers informed concerning the transition.

5. Mr. Wayne G. Culp, Director-State Finance for US West, also appeared and testified. Mr. Culp stated that Citizens is purchasing not only the assets comprising the exchanges, but also is purchasing the exchanges as a going concern. As such, the transaction will be accounted for by US West in accordance with 47 CFR Part 32 as a sale of plant with traffic. Mr. Culp testified that in accordance with the requirements of 47 CFR Part 32 and Commission Rule 002.24(b), any gain from the sale will be treated as non-operating income by US West.

6. Mr. F. Wayne Lafferty, Vice President, Regulatory and Government Affairs of CUC, and Vice President, Regulatory and Government Affairs of Citizens also appeared before the Commission to testify in this matter. Mr. Lafferty stated that CUC, through its subsidiaries, has provided telephone service since 1935, currently operates as an incumbent local exchange carrier in 13 states, and owns 83 percent of Electric Lightwave, Inc., a full-service, facilities-based competitive local exchange carrier. Mr. Lafferty confirmed the accuracy of the contents of the joint application and the amended joint application. Approximately 14,600 access lines are included in the exchanges proposed to be acquired from US West. Mr. Lafferty explained that the decision of CUC to purchase the exchanges is a part of the revised strategic vision of CUC to increase its telecommunications operations, and to concentrate its operations in small and medium-sized cities.

7. Mr. Lafferty described CUC's and Citizens' technical, managerial and financial qualifications. Citizens will have access to management resources of its affiliated companies for planning,

marketing, network, service development, provisioning and delivery, and legal and regulatory assistance. CUC's, and thus, Citizens' initial funding of the acquisition of the exchanges will be provided from cash and investment portfolio or from short-term borrowing. The financial condition of CUC is presented in its 1999 annual report presented with Mr. Lafferty's prepared testimony as Exhibit FWL-1. Citizens' technical capabilities are derived from CUC's operation of existing telecommunications properties by its affiliated companies for the past 65 years and currently in 13 states.

8. Mr. Lafferty also described the impact of the proposed transaction on current US West customers. No changes in local service are proposed. Citizens intends to adopt US West's transition plan approved by this Commission in Application No. C-1628, subject to the provisions of the stipulation approved by the Commission in this docket on March 28, 2000. As a part of such plan, residential rates will remain unchanged and business rates will decrease by \$3.35 per month commencing September 1, 2000. Citizens will adopt US West's tariffs pertaining to local exchange and intraLATA interexchange service. Customers have received information concerning the transaction, and will receive additional information concerning the transition from US West and Citizens. Also, Mr. Lafferty testified that Citizens intends to negotiate interconnection agreements with all telecommunications service providers that currently have agreements with US West. If such agreements cannot be negotiated prior to closing of the transaction, the existing US West agreement with the provider will continue until a new agreement has been negotiated and submitted to the Commission for approval.

9. Mr. Lafferty testified that for the purposes of jurisdictional separations and federal universal service funding, a study area waiver by the FCC is required by Citizens in connection with the acquisition of the exchanges. As a condition to the grant of such a waiver, the FCC requires that this Commission issue a statement of non-objection to the waiver request. The Commission finds that a study area waiver should be granted in connection with Citizens' acquisition of the exchanges, and this order should be regarded by the FCC as a statement of non-objection to the grant of study area waiver by the FCC.

10. Citizens seeks designation by this Commission as an ETC. US West has been so designated in the exchanges. The Commission finds that Citizens meets all requirements for designation as an ETC and shall, upon closing of the purchase of the exchanges, be so designated in the exchanges.

11. Mr. John J. Lass, Vice President and General Manager, Central Region, of Citizens, offered testimony concerning Citizens' customer service and the planned transition of service from US West to Citizens in the exchanges. Operations offices will be located

in Columbus, Kearney and O'Neill to serve the exchanges. Mr. Lass outlined procedures for customers to obtain assistance with service orders, billing inquiries and other customer inquiries. US West employees currently working in Nebraska, primarily in connection with the exchanges, will be hired by Citizens at closing if the employee chooses to accept Citizens' offer of employment. Transition plans and procedures were outlined by Mr. Lass. Evaluations are currently in process by Citizens to formulate plans for modernization and updating of network and switching facilities.

12. Upon questioning by the Commission, Mr. Lafferty indicated that Citizens intends to continue to collect the \$0.43 per residential line local number portability (LNP) charge and other associated LNP charges on business lines and trunks currently assessed by US West. US West was granted authority by the FCC to assess and collect these charges to recover costs to implement hardware and software improvements required to ensure permanent number portability. Mr. Lafferty told the Commission that these charges will be assessed to Citizens by US West on lines accessed through the switches which Citizens will lease from US West on an interim basis. The Commission finds that Citizens should be allowed to continue to assess and collect these LNP charges, but only on those lines associated with the switch or switches which are leased by Citizens from US West. Citizens shall notify the Commission thirty days prior to the termination of any such lease and discontinue the LNP charges for its customers once the switch has been replaced and a lease is no longer in place. Should Citizens subsequently incur costs associated with LNP and obtain the necessary approval from the FCC to recover such costs through an LNP charge to customers, Citizens may reinstate the charge based on their own costs.

13. Based upon the evidence in the record, the Commission finds that the sale by US West, and the purchase by Citizens, of the exchanges is of advantage to the persons to whom service is currently being rendered by US West, that the terms of such purchase and sale as described in the agreement are fair and reasonable, that the proposed transaction is in the public interest and should be approved by the Commission.

14. The Commission finds that US West has already provided notification to customers in the exchanges of US West's plan to sell the exchanges to Citizens. In addition, Mr. Lanphier has advised the Commission that US West will provide a further notice to these customers at least 30 days prior to the closing of the sales of the exchanges to Citizens. Based upon the evidence offered, the Commission finds that US West has satisfied, or will prior to closing of the purchase of the exchanges by Citizens, satisfy the requirements of Neb. Rev. Stat. § 86-806 (Reissue 1999) relating to discontinuation of service.

15. The Commission is mindful of the existence of the Telephone Consumer Slamming Prevention Act, Neb. Rev. Stat. §§ 86-1901-1911 (1999 Supp.) (the Anti-Slamming Act), and that the closing of the sale of the exchanges by US West to Citizens will, strictly speaking, result in a change of local service and intraLATA

interexchange service provider to the customers located in the exchanges. However, the Commission finds that the Anti-Slamming Act is not applicable to this transaction, nor would the policy considerations that underlie the Anti-Slamming Act be served by its application to this transaction for the following reasons: (a) This transaction is subject to the comprehensive regulatory procedures set forth in Rule 002.26, Chapter 5, Title 291 as described above, and to the specific statutory requirements of Neb. Rev. Stat. § 75-604 (1999 Supp.) relating to the issuance of a certificate of public convenience and necessity to serve the exchanges, such procedures designed to insure that this Commission finds that this transaction is of advantage to customers served and in the public interest prior to granting approval; (b) This transaction is also subject to 47 U.S.C. § 214 and Neb. Rev. Stat. § 86-806 (Reissue 1999), both of which require that notice be given to customers in the exchanges advising of the discontinuation of service by US West and the continuation of service to the customers by Citizens (the record demonstrates that US West and Citizens either have complied with or are committed to comply with the requirements of these sections); and (c) As the purchaser and successor in interest to the US West facilities and personnel serving the customers in the exchanges, Citizens will not represent any change in service to the customers except with respect to the legal entity that provides such service.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Amended Joint Application No. C-2124 be and it is hereby granted, and that US West is authorized to sell and transfer, and Citizens is authorized to acquire the exchanges, and the operating assets and properties associated therewith in accordance with the terms of the agreement, as amended.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's official Certificate of Public Convenience and Necessity granted to Citizens to provide telecommunications services, including basic local exchange service and intraLATA interexchange service to customers located in the exchanges, and to the service areas comprising each of the exchanges.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's statement of non-opposition to the grant of study area waiver from the FCC relating to Citizens' acquisition of the exchanges, which waiver will be requested from the FCC.

IT IS FURTHER ORDERED that Citizens meets all requirements for designation as an ETC and shall, upon closing of the purchase of the exchanges, be so designated in the exchanges.

IT IS FURTHER ORDERED that upon completion of written notification by US West to the customers in the exchanges, provided at least 30 days prior to the closing of the sale of the exchanges

to Citizens, US West shall have complied with the requirements of Neb. Rev. Stat. § 86-806 (Reissue 1999), and the Commission thereupon approves the discontinuation of service by US West to customers in the exchanges.

IT IS FURTHER ORDERED that the Anti-Slamming Act is not applicable to this transaction, nor would the policy considerations that underlie the passage of the Anti-Slamming Act be served by its application to this transaction.

IT IS FURTHER ORDERED that any gain realized by US West in this transaction be treated as non-operating income in accordance with 47 CFR Part 32 pertaining to sale of plant with traffic, and Commission Rule 002.24(B), and shall be returned to the general operating fund of US West.

IT IS FURTHER ORDERED that Citizens shall notify the Commission thirty days prior to the termination of any lease of a switch from US West.

IT IS FURTHER ORDERED that Citizens discontinue any local number portability charges to its customers upon the termination of a lease from US West of any switch or switches and/or the replacement of switches leased by US West, provided that Citizens may re-institute a local number portability charge at a future date in accordance with FCC requirements.

IT IS FURTHER ORDERED that Citizens is obligated to abide by the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service and quality of service) applicable to any other local exchange carrier.

IT IS FURTHER ORDERED that, to the extent Citizens provides access line service as referenced in the Telecommunications Relay System Act, Neb. Rev. Stat. § 86-1302 to 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. Title 291, ch. 5, section 001.01B, Citizens 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 surcharge, and shall remit to the Commission the proceeds from the Relay Surcharge as provided by the Relay Act.

IT IS FURTHER ORDERED that Citizens comply with all necessary statutes and Commission Rules and Regulations as they pertain to the Nebraska Universal Service Fund.

IT IS FURTHER ORDERED that Citizens shall file, in accordance with the applicable statutes, on or before April 30 of each year, an annual report with the Commission consisting of: (a) a copy of any report filed with the FCC; (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, Citizens 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 upon completion of the acquisition of the exchanges by Citizens, that Citizens shall file with the Commission a tariff, boundary map and price list for each of the exchanges.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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