

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-2241
DIECA Communications, Inc., d/b/a)
Covad Communications Company, Santa)
Clara, California, seeking)
Certificates of Public Convenience) GRANTED
and Necessity to provide)
telecommunications services includ-)
ing basic local exchange service.) Entered: June 14, 2000

APPEARANCES:

For the Applicant:
Steven G. Seglin
Crosby Guenzel Law Firm Inc.;
134 So. 13th Street, Suite 400
Lincoln, Nebraska 68508

For Arapahoe Telephone Company;
Benkelman Telephone Company,
Cozad Telephone
Company; Hemingford Cooperative
Telephone Company; Henderson
Cooperative Telephone
Company; and Wauneta Telephone
Company:

For the Commission:
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BY THE COMMISSION:

By its application filed March 9, 2000, DIECA Communications, Inc., d/b/a Covad Communications Company (DIECA or Applicant), Santa Clara, California, 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 March 10, 2000. The following parties filed petitions of formal intervention: Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; and Wauneta Telephone Company (collectively referred to hereafter as the Intervenor). A hearing on the application was held May 16, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

The applicant presented evidence that the applicant is a publicly-held Virginia corporation headquartered in Santa Clara, California. The applicant has obtained authority from the Nebraska Secretary of State to transact business in the state of Nebraska. The applicant is authorized to provide telecommunications service in Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Maryland, Maine, Michigan, Minnesota, Missouri, Montana, New Hampshire,

New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, West Virginia and Wisconsin.

In support of its application, the applicant produced one witness, Tom Allen, vice president of ILEC regulatory affairs for the applicant, who testified as follows:

The applicant seeks authority to provide interexchange telecommunications statewide and local exchange telecommunications services statewide. Mr. Allen testified that the applicant hopes to expand its network into the Omaha area in June of 2000.

Mr. Allen testified that DIECA is primarily a digital subscriber line (DSL) provider that proposes to provide high-speed links between the end user and their Internet service provider. The applicant intends to provide its services to both residential and business consumers. DIECA intends to have more than 300,000 lines by the end of this year and more than a million lines by the end of next year. DIECA plans to provide capital investments in the areas the carrier will serve. Mr. Allen testified DIECA intends to build networks in the central offices in every metropolitan area it provisions telecommunications services. Mr. Allen further testified that the applicant intends to eventually move into smaller towns in Nebraska, and emphasized the applicant's goal in helping to eradicate the digital divide.

Mr. Allen testified that the applicant has sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. Each of the applicant's senior executives has extensive experience in the telecommunications industry. The upper management team is composed of former Regional Bell Telephone Company executives. Mr. Allen further testified that the employees DIECA hires, not only for senior management, but for mid-level management, are all people who are veterans of either the telecommunications or the computer software industry. Mr. Allen stated that DIECA has its own test facility in the Silicon Valley to test new generations of equipment so that applicant can provide the most current high-speed and ready access services.

Mr. Allen testified that the applicant possesses the financial capability to provision its proposed telecommunications services throughout the state of Nebraska. Mr. Allen testified that as of February, applicant had gone through a secondary offering providing it with capital of close to one billion dollars in capital reserves which it will use to execute its business plan.

Mr. Allen testified that a grant of the applicant's request for authority will provide Nebraska consumers with a another choice in providers and competitive prices. Mr. Allen further testified that granting this application will promote the public interest by providing consumers with advanced telecommunications services.

On cross-examination, Mr. Allen confirmed that the applicant has not made a bona fide request of any rural carrier for interconnection, service or network elements. He testified that the company has entered into a voluntarily-negotiated interconnection agreement with US West which has not yet been filed with the Commission.

Upon questioning by the Commissioners and staff, Mr. Allen testified that the applicant will handle customer complaints directly. Mr. Allen testified that the applicant has had no certificates revoked and has not been the subject of any formal complaints in any jurisdiction. Mr. Allen also testified that the applicant primarily markets to and serves small to mid-sized businesses.

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 Telecommunications Act of 1996 (Act).

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange services and interexchange services statewide. 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 applicant is allowed to provide local exchange service to its users, it must either:

(a) Through negotiation or arbitration or pursuant to Section 252(i) of the Act, 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 statement of generally available terms and conditions (SGAT) or similar offering, purchase rates from that SGAT or similar offering.

This order does not terminate, waive or in any manner diminish the exemptions and protections 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 this 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 Sections 002.21 and 003.08 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 incumbent local exchange carriers pursuant to Section 251(c) of the Act.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2241 be, and is hereby granted.

IT IS FURTHER ORDERED that the applicant comply with Section 251(f)(1)(B) of the 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 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 Systems 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 shall 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 30th 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 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 and US West, and to provide interexchange telecommunications services within the state of Nebraska.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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