

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-2300
Maxcess, Inc., Orlando, Florida,)
seeking authority to operate as a) GRANTED
competitive local exchange carrier)
and interexchange carrier of)
telecommunications services within)
the state of Nebraska.) Entered: August 1, 2000

Appearances:

For the applicant:	For Arapahoe Telephone Com-
Jon Bruning	pany; Benkelman Telephone Com-
1079 N. 204th Avenue	pany; Cozad Telephone Company;
Elkhorn, Nebraska 68022	Hemingford Cooperative
	Telephone Company; Henderson
For the Commission:	Cooperative Telephone Company;
Shanicee Knutson	and Wauneta Telephone Company:
300 The Atrium	Mark Fahleson
1200 N Street	Rembolt, Ludtke & Berger
Lincoln, Nebraska 68508	1201 Lincoln Mall, Suite 102
	Lincoln, Nebraska 68508

By the Commission:

By its application filed June 21, 2000, Maxcess, Inc. (Applicant or Maxcess), Orlando, Florida, seeks authority to operate as a competitive local exchange carrier and interexchange carrier of telecommunications services within the state of Nebraska. Amendments to the application were filed on June 14, 2000, and again on July 11, 2000. Notice of the application appeared in The Daily Record, Omaha, Nebraska on May 22, 2000 and again on June 16, 2000, pursuant to Commission rules. A hearing was held on July 19, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

E V I D E N C E

In support of the application, the applicant produced one witness, Daniel Webb, the chief technical officer, who testified as follows:

Mr. Webb testified that he filed two amendments to this application. The amendment filed on June 14, 2000, clarified with the Commission that the application represented a request for statewide local exchange authority. The amendment filed on July 11, 2000, provided the Commission with changes in company addresses. Mr. Webb testified that he has been with Maxcess since its inception at June 6, 1998. He testified that the applicant is privately-held and incorporated in the state of Florida. The applicant's principal place of business is also

located in Florida. The applicant intends to offer converged networking, long distance and local exchange services. Maxcess has been granted authority to operate as an interexchange carrier in approximately 35 states. Maxcess has been granted approval to operate as a local exchange carrier by about 29 state commissions. No application for authority has been denied by any state commission. The authority the applicant is requesting in Nebraska is the same as that requested and received in other states.

The witness provided three documents to demonstrate financial, technical and managerial competency which were offered and accepted as exhibits at the hearing. In addition to this evidence, Mr. Webb testified as to the management, technical and financial abilities to provide the proposed services in the requested territory.

Mr. Webb testified that Maxcess possesses the management and technical experience necessary to deploy the proposed services in Nebraska. He stated that the president of Maxcess has been very active in the internet community. He co-organized the Florida Internet Service Providers Association, and is still the president of that organization. Mr. Webb also testified and presented demonstrative evidence that the senior management staff has extensive telecommunications experience, including one senior officer with more than 32 years of telecommunications experience.

Mr. Webb further testified that the applicant possesses adequate technical competence to provide the proposed telecommunications services in the service territory requested. Mr. Webb testified that the applicant has the technology necessary to offer DSL through a converged network using T-1 loops to get past mileage restrictions and digital loop carriers. The applicant intends to utilize a self-healing, fully redundant ring to connect everything together. The underlying incumbent will provide the national backbone ATM services to bring that traffic back to the rest of the network. Mr. Webb testified that the long distance traffic will be handed off to underlying carriers on the basis of least cost routing.

Likewise, Mr. Webb testified that the applicant possesses the financial capability to provide the proposed interexchange and local exchange services throughout the geographic area of the proposed service territory as evidenced by the financial statements provided to the Commission as an exhibit to its application. Mr. Webb testified that they were in a start-up mode in their operations; however, they received their first significant funding in November. In response to questions asked by the Commission, Mr. Webb testified that the company hires and pays for a large number of consultants working to build Maxcess which accounts for the money spent on personnel, services and legal fees rather than investment in equipment.

Mr. Webb testified that granting this application would

promote the public interest by providing residents, and in particular, small-to medium-sized businesses with an alternative selection with competitive prices thereby promoting the economy. He further stated that the services, as they intend to offer and bundle them, would have a very positive impact on the small businesses in the applicants proposed service area.

Upon cross-examination, Mr. Webb confirmed that Maxcess' application did not represent a bona fide request for interconnection, services or network elements with any rural carriers protected under the rural exemption in the federal Telecommunications Act.

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 and interexchange telecommunications services in the state of Nebraska. 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 territory. 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 Telecommunications Act of 1996 (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 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 incumbent local exchange carriers 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-2300 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 to 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 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 applicant file the applicable tariffs 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 and interexchange telecommunications services within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of August, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director

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