

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-2338  
of UtiliCorp Communications )  
Services, Inc., Kansas City, Mis- )  
souri, seeking to obtain a )  
Certificate of Public Convenience )  
and Necessity in the state of )  
Nebraska for the purpose of pro- ) GRANTED  
viding local exchange and )  
interexchange telecommunications )  
services. ) Entered: August 29, 2000

APPEARANCES:

For the Applicant:  
Kathryn A. Flaherty  
Blackwell Sander Peper Martin  
13710 FNB Parkway, Suite 200  
Omaha, Nebraska 68154

For the Intervenors:  
Mark A. Fahleson  
Rembolt, Ludtke & Berger  
1201 Lincoln Mall  
Suite 102  
Lincoln, NE 68508

For the Commission:  
Chris A. Post  
300 The Atrium  
1200 N Street  
Lincoln, NE 68508

BY THE COMMISSION:

By its application filed July 5, 2000 (the Application), UtiliCorp Communications Services, Inc. (UCS or the Applicant) seeks authority to provide telecommunications services as a competitive local exchange carrier and intrastate interexchange carrier in the state of Nebraska. Notice of the application appeared in The Daily Record on July 6, 2000. Petitions for formal intervention were filed by Arapahoe Telephone Company, Benkelman Telephone Company, Inc., Cozad Telephone Company, Henderson Cooperative Telephone Company and Wauneta Telephone Company (collectively referred to as the Intervenors). A hearing on the application was held August 15, 2000, at 1:30 p.m. in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant presented evidence that UCS is a corporation organized under the laws of the state of Delaware and is a wholly-owned subsidiary of UtiliCorp United, Inc. UCS has obtained authority from the Nebraska Secretary of State to transact business in the state of Nebraska.

The applicant produced one witness, Mike Deggendorf, vice president of Market Development, who testified as follows:

Mr. Deggendorf testified that UCS is not presently certificated to provide telecommunications services in any jurisdiction; however, it has an application pending with the Colorado Public Service Commission. Mr. Deggendorf testified that UCS is requesting authority to operate as a local exchange and interexchange provider of both high-speed data and voice services on a facilities and resale basis throughout the state of Nebraska.

Mr. Deggendorf also testified that UCS has the managerial and technical resources and abilities to provide local and interexchange telecommunications services in Nebraska. According to Mr. Deggendorf, UCS possesses extensive telecommunications management expertise through its 50 percent ownership in Everest Connections, a certified local exchange carrier in Missouri and Kansas. Furthermore, UCS has access to additional telecommunications resources by virtue of UtiliCorp United, Inc.'s 36 percent ownership of Quanta Services, Inc. and its 35 percent ownership of ExOp, a facilities-based local exchange carrier.

Mr. Deggendorf indicated that UCS has sufficient financial resources to implement and sustain its proposed services in Nebraska. Mr. Deggendorf stated that initially UCS' operations are being financed by its parent company, UtiliCorp United, Inc. Copies of the 1999 Annual Report of UtiliCorp United, Inc., together with its form 10-Q Report as of March 30, 2000, were submitted with the application.

Mr. Deggendorf testified that in providing the proposed services, UCS will comply with all Commission requirements applicable to local and interexchange carriers as well as any other applicable state or federal regulations, statutes and orders. Furthermore, it will participate in any universal funding arrangement which is required by law or by the Nebraska Commission. UCS is committed to the protection of public safety and welfare through the provision of 911 service and will safeguard the rights of consumers through the use of a 24-hour toll-free customer service line.

UCS indicated that it may require deposits of customers based on credit checks. If deposits are required, UCS recognizes that it may be required to post a bond and must comply with Commission rules regarding deposits. UCS has never been subject to formal or informal complaints before any state commissions.

Mr. Deggendorf concluded his testimony by stating that he believes that the proposed offering of service by UCS will serve the public interest by providing choice, improving the efficiency

in the provision of services, accelerating deployment of technological innovations, improving customer service and developing innovative services to meet customer needs.

Upon cross-examination, Mr. Deggendorf confirmed that UCS has not served any bona fide request for interconnection upon any incumbent local exchange carrier (ILEC) in Nebraska and that this application does not constitute a bona fide request for interconnection with any of the intervenors.

Upon questioning by Mr. Chris Post, Mr. Deggendorf confirmed that UCS' application sought statewide authority. On further cross-examination, Mr. Mark Fahleson, attorney for the intervenors, had Mr. Deggendorf read a portion of the stipulation entered as Exhibit No. 5 in this matter into the record. That portion reads as follows:

The stipulation is based on the representation of the applicant that the applicant seeks authority in this application to provide competitive local exchange services initially in territories presently served by carriers other than Arapahoe Telephone Company, Benkelman Telephone Company, Inc., Cozad Telephone Company, Henderson Cooperative Telephone Company, and Wauneta Telephone Company as authorized and described in the orders and records of the Commission. Applicant may seek to provide

service in the territory of carriers by filing future applications.

Mr. Post, concluded the cross-examination by once again inquiring as to the applicant's requested service territory. Mr. Deggendorf's response was that he previously should have stipulated statewide exclusive of the territories that are marked in Exhibit No. 5.

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;

(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.

The applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide competitive local exchange and intrastate interexchange services. 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.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications. All telecommunications carriers seeking 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 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 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-2338 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 the 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 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 these are not available, applicant shall submit a balance sheet and income statement for the previous year of operation, as well as the investment made in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues and expenses, and taxes.

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

IT IS FURTHER ORDERED that the applicant comply with all necessary statutes and Commission orders, rules and regulations as they pertain to the Nebraska Universal Service Fund.

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 intrastate interexchange service throughout the state of Nebraska and to provide competitive local exchange services within Nebraska in territories presently served by carriers other than Arapahoe Telephone Company, Benkelman Telephone Company, Inc., Cozad Telephone Company, Henderson Cooperative Telephone Company and Wauneta Telephone Company as authorized and described in the orders and records of the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 29th day of August, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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