

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2472
of Citizens Telecommunications)
Company of Nebraska, Citizens)
Nebraska Acquisition LLC and Citi-)
zens Telecommunications Company)
of Nebraska LLC to structure the) GRANTED
acquisition of certain telephone)
exchanges acquired from US West)
Communications, Inc., now known as)
Qwest Communications, as a like-)
kind exchange.) Entered: February 21, 2001

APPEARANCES:

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BY THE COMMISSION:

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

By joint application filed January 17, 2001, Citizens Telecommunications Company of Nebraska (CTC-Nebraska), Citizens Nebraska Acquisition LLC (CZN-Acquisition) and Citizens Telecommunications Company of Nebraska LLC (CTC-LLC) seek approval to structure CTC-Nebraska's acquisition of the Nebraska exchanges formerly owned and operated by US West Communications, Inc., now known as Qwest Communications (Qwest) to facilitate a "like-kind exchange" in accordance with the requirements of the Internal Revenue Code (the IRC), and to transfer the Nebraska exchanges formerly operated by GTE Midwest Incorporated (the "former GTE exchanges") from CTC-Nebraska to CTC-LLC.

Notice of the filing of the joint application was published in the The Daily Record on January 19, 2001, pursuant to the Rules of the Commission, and a letter of notification was provided to interested parties on January 22, 2001.

No protests of the joint application, nor petitions for intervention were filed by the protest date, which was February 19, 2001. Because there have been no protests or petitions for intervention, this application will be processed by modified procedure pursuant to Commission Rule 018.03, Chapter 5, Title 291.

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

1. The sale and transfer of the Qwest exchanges to CTC-Nebraska was approved by this Commission in its Findings and Conclusions entered in Application No. C-2124 on May 10, 2000, (the C-2124 order). (These exchanges will be referred to in this application as the Qwest exchanges.) The sale and transfer of the former GTE exchanges to CTC-Nebraska was approved by this Commission in its Findings and Conclusions entered in Application No. C-2148 on April 5, 2000, and corrected by Order Nunc Pro Tunc, dated April 11, 2000 (the C-2148 order).

2. The Commission finds that CTC-Nebraska is a Delaware corporation that is a wholly-owned subsidiary of Citizens Communications Company (Citizens). CTC-Nebraska assumed operation of the former GTE exchanges effective July 1, 2000, in accordance with the C-2148 order, and currently operates such exchanges subject to the jurisdiction and authority of this Commission. CTC-Nebraska was also granted a certificate of public convenience and necessity to acquire and operate the Qwest exchanges by the C-2124 order. The closing of the purchase of the Qwest exchanges is firmly scheduled to occur on February 28, 2001.

3. Citizens provides diversified utility services through divisions and subsidiaries divided into two businesses: (a) the Public Services Sector, which includes electric, gas, water and wastewater services; and (b) the Communications Sector, which provides both regulated and competitive communications services to residential, business and wholesale customers. In 1999, the decision was made by Citizens to sell its Public Services Sector properties, and to enhance its Communications Sector operations through the acquisition of approximately one million access lines in transactions with GTE Corporation and Qwest. The former GTE exchanges and the Qwest exchanges are a part of such acquisitions to increase Citizens' Communications Sector holdings.

4. In the disposition by Citizens of its Public Services Sector assets, gains will be generated. In order to defer the state and federal income taxes that would otherwise be immediately payable on such gains, Citizens desires to utilize, to the extent available, the "like-kind exchange" technique that is available under the IRC. By so doing, the immediate tax expense of Citizens' repositioning from the Public Services Sector to the Communications Sector will be reduced, and the capital that would otherwise have been required to pay such taxes will be available for other corporate purposes including additions to and upgrades of the communications facilities serving the customers in the properties being acquired, including the Qwest exchanges.

5. Specific rules prescribed by the Internal Revenue Service govern like-kind exchanges. These rules involve the time period within which a like-kind exchange must be completed, and the assets that qualify for like-kind exchange treatment. Due to the fact that the sequencing of Citizens' repositioning transactions will result in the purchase of the Qwest exchanges prior to the sale of the Public Services Sector assets that will be the "relinquished property" in the like-kind exchange, Citizens desires to utilize CZN-Acquisition as an intermediary entity that is referred to as an "exchange accommodation titleholder (EAT)" to facilitate, to the extent available, the like-kind exchange of the Qwest exchanges for such Public Services Sector assets.

6. At the time that CTC-Nebraska received the C-2124 order on May 10, 2000, it appeared that the sale of the Public Services Sector assets would be accomplished prior to closing the purchase of the Qwest exchanges. This expectation will not be realized. Thus, in order to accomplish the like-kind exchange in a manner that will comply with the IRC, Citizens has advised the Commission that it needs to follow the procedures described below which, among other steps, requires that the Commission approve the issuance and transfer of certificates of public convenience and necessity to own and operate the Qwest exchanges and to cancel the certification issued by the Commission to CTC-Nebraska in the C-2124 order all as more particularly described herein.

7. CZN-Acquisition is a Delaware limited-liability company that has been formed to act as an "exchange accommodation titleholder" for the Qwest exchanges for the sole purpose of facilitating the completion of a like-kind exchange of the Qwest

exchanges for certain Public Services Sector assets pursuant to the IRC as more fully described herein. CZN-Acquisition is a member-managed, single member limited-liability company for which National Safe Harbor exchanges, a California corporation (NSHE), is the single member.

8. CZN-Acquisition will act as the "exchange accommodation titleholder" to purchase the assets associated with the Qwest exchanges from Qwest. Such assets will be held by CZN-Acquisition until the designated Public Services Sector properties are sold by Citizens, or 180 days following the acquisition of such assets, whichever shall first occur. Funds to purchase the Qwest exchanges will be provided by Citizens just as if CTC-Nebraska had proceeded with the purchase of the Qwest exchanges as described in the C-2124 order. The funds will be loaned by Citizens to NSHE and will be documented by a credit agreement, and secured by the membership interest of CZN-Acquisition held by NSHE, a guarantee of CZN-Acquisition, and the tangible assets being purchased by CZN-Acquisition. Since the title to the tangible assets comprising the Qwest exchanges will be held by CZN-Acquisition, the Commission finds that the certificate of public convenience and necessity to operate the Qwest exchanges shall be issued to CZN-Acquisition effective upon the closing of the purchase of the Qwest exchanges, and shall be held by CZN-Acquisition during such time period that title to the tangible assets associated with the Qwest exchanges is held by CZN-Acquisition. Upon the issuance to CZN-Acquisition of such certificate of public convenience and necessity to operate the Qwest exchanges, the certificate of public convenience and necessity now held by CTC-Nebraska pertaining to the Qwest exchanges shall be canceled.

9. CTC-LLC is a Delaware limited-liability company that, among other things, will manage the Qwest exchanges on behalf of CZN-Acquisition. CTC-LLC is a member-managed, single member limited-liability company that is wholly-owned by Citizens. In order to document the management duties of CTC-LLC, a management agreement will be executed by and between CTC-LLC and CZN-Acquisition that will vest in CTC-LLC exclusive operating authority and responsibility with respect to the Qwest exchanges and the telecommunications services provided in the Qwest exchanges during such period that title to such exchanges is held by CZN-Acquisition. CTC-LLC also will lease from CZN-Acquisition all of the tangible assets purchased from Qwest, and thereby will acquire exclusive use and responsibility for such assets.

10. Upon the disposition of the Public Services Sector assets to be utilized by Citizens in the like-kind exchange, NSHE's membership interest in CZN-Acquisition will be acquired by Citizens. The Commission grants its approval of this transfer of the membership interest in CZN-Acquisition to Citizens. Promptly thereafter, Citizens will merge CZN-Acquisition with and into CTC-LLC. By virtue of such merger, the certificate of public convenience and necessity to operate the Qwest exchanges will be transferred to CTC-LLC by operation of law, together with the tangible assets associated with the Qwest exchanges. The existence of CZN-Acquisition will then terminate, and the Qwest exchanges will be owned and operated by CTC-LLC, which is wholly-owned by Citizens. This ownership structure is consistent with the structure originally approved by the Commission in its C-2124 order. Therefore, the Commission approves the transfer of the certificate of public convenience and necessity to operate the Qwest exchanges from CZN-Acquisition to CTC-LLC effective upon the merger of CZN-Acquisition with and into CTC-LLC.

11. In order to accomplish the administrative efficiency of a single Citizens' entity operating the former GTE exchanges as well as the Qwest exchanges, CTC-Nebraska will be merged with and into CTC-LLC. Such merger will occur prior to the merger of CZN-Acquisition with and into CTC-LLC, and Citizens could cause such merger to occur prior to or concurrently with the closing of the Qwest transaction. Thereby, the assets and properties comprising the former GTE exchanges, as well as the certificate of public convenience and necessity granted by the Commission for the operation of such exchanges by the C-2148 order, will be held by CTC-LLC. The Commission approves the transfer of the certificate of public convenience and necessity relating to the former GTE exchanges from CTC-Nebraska to CTC-LLC through the above-described merger.

12. The Commission finds that Citizens modeled its investment commitment to purchase the Qwest exchanges on the utilization of a like-kind exchange transaction in order to maximize the funds available to complete this acquisition and, consistent with the evidence provided by CTC-Nebraska in Application No. C-2124, to complete the plant upgrades needed to provide customers in the Qwest exchanges with access to advanced telecommunications and information services. However, the timing of the transactions as described above has necessitated the use of the "exchange accommodation titleholder" arrangement in order to

preserve like-kind exchange treatment for this transaction and the tax deferral provided thereby. Therefore, in accordance with Commission Rule 002.26, Chapter 5, Title 291, approval by the Commission of the above-described structure is of advantage to the persons to whom service is to be rendered in the Qwest exchanges and the former GTE exchanges, and is in the public interest.

13. The Commission finds that because a Citizens-controlled entity will either exclusively manage or own the assets of the Qwest exchanges and the former GTE exchanges at all stages of the transactions required to accomplish the above-described like-kind exchange, neither the requirements of Neb.Rev.Stat. Section 86-806 (Reissue 1999) concerning discontinuation of service, nor the requirements of Neb.Rev.Stat. Section 86-1901 to 86-1911 (2000 Cum.Sup.) concerning slamming, are applicable. The Commission has previously found in its C-2124 order and its C-2148 order that the requirements of these sections have been satisfied in connection with Citizens' acquisition of the Qwest exchanges and the former GTE exchanges through CTC-Nebraska.

14. The Commission further incorporates herein by reference, as if fully set forth herein, its Findings and Conclusions as set forth in the C-2124 order and in the C-2148 order.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this Joint Application No. C-2472 be, and it is hereby granted, and that (a) CZN-Acquisition is authorized to acquire the Qwest exchanges, and the operating assets and properties associated therewith to facilitate the like-kind exchange described herein; (b) a certificate of public convenience and necessity to operate the Qwest exchanges shall be issued to CZN-Acquisition effective upon the closing thereof, and that thereupon, the certificate of public convenience and necessity held by CTC-Nebraska pertaining to the Qwest exchanges shall be canceled; (c) NSHE is authorized to transfer ownership of its membership interest in CZN-Acquisition to Citizens to facilitate the like-kind exchange described herein; (d) Citizens is authorized to merge CZN-Acquisition with and into CTC-LLC, thereby transferring ownership of the Qwest exchanges, and the operating assets and properties associated therewith to CTC-LLC; and (e)

Citizens is authorized to merge CTC-Nebraska with and into CTC-LLC, thereby transferring ownership of the former GTE exchanges and the certificate of public convenience and necessity to operate the former GTE exchanges to CTC-LLC.

IT IS FURTHER ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity granted (a) to CZN-Acquisition effective upon CZN-Acquisition's purchase of the Qwest exchanges and the operating assets and properties associated therewith from Qwest Corporation; (b) to CTC-LLC for the Qwest exchanges effective upon the merger of CZN-Acquisition with and into CTC-LLC; and (c) to CTC-LLC for the former GTE exchanges effective upon the merger of CTC-Nebraska with and into CTC-LLC, each to provide telecommunications services, including basic local exchange service and intraLATA interexchange service to customers located in such exchanges, and to the service areas comprising each of such exchanges.

IT IS FURTHER ORDERED that CZN-Acquisition and CTC-LLC each meet all requirements for designation as an eligible telecommunications company (ETC), and shall, upon closing of the transactions as described herein that vest ownership of the Qwest exchanges and/or the former GTE exchanges, as applicable, in CZN-Acquisition and CTC-LLC, be so designated in such exchanges.

IT IS FURTHER ORDERED that neither the requirements of Neb.Rev.Stat. Section 86-806 (Reissue 1999) concerning discontinuation of service, nor the requirements of Neb.Rev.Stat. Section 86-1901 to 86-1911 (2000 Cum.Sup.) concerning slamming, are applicable to this joint application. The Commission has previously found in its C-2124 order and its C-2148 order that the requirements of these sections have been satisfied in connection with Citizens' acquisition of the Qwest exchanges and the former GTE exchanges through CTC-Nebraska.

IT IS FURTHER ORDERED that each and every one of the ordering paragraphs set forth in the C-2124 order and in the C-2148 order that are not inconsistent with the preceding ordering paragraphs are hereby incorporated herein by reference as if set forth in their entirety herein.

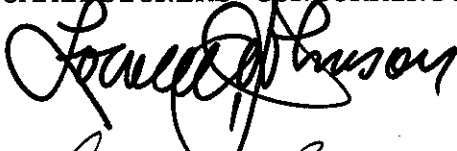
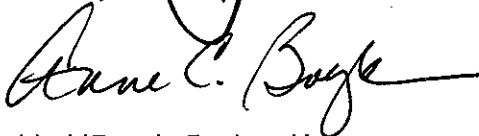
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MADE AND ENTERED at Lincoln, Nebraska, this 21st day of February, 2001.

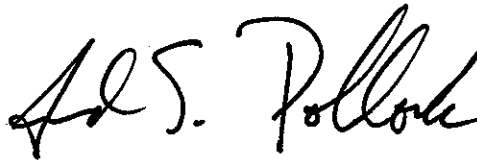
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chairman

//s//Frank E. Landis
//s//Daniel G. Urwiller

ATTEST:



Executive Director