

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Qwest	)	Application No. C-3050
Corporation, Denver, Colorado,	)	
seeking to amend its certificate	)	
of public convenience and	)	
necessity to provide local	)	GRANTED
exchange service in all	)	
exchanges within the State of	)	
Nebraska in which Qwest is not	)	
currently a certified local	)	Entered: May 4, 2004
exchange carrier.	)	

BY THE COMMISSION:

On November 7, 2003, Qwest Corporation (Qwest) filed an application to amend its certificate of public convenience and necessity to provide local exchange service in all exchanges within the state of Nebraska in which Qwest is not currently a certified local exchange carrier. Notice of this docket appeared in The Daily Record, Omaha, Nebraska, on November 11, 2003.

Petitions for Formal Intervention were timely filed on December 10, 2003, by Hartman Telephone Exchange, Inc.; Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Wauneta Telephone Company; Curtis Telephone Company; Glenwood Telephone Membership Corp.; Diller Telephone Company; Keystone-Arthur Telephone Company; Plainview Telephone Company, Inc.; the Rural Independent Companies; Hemingford Co-operative Telephone Company; Elsie Communications, Inc.; and Dalton Telephone Company, Inc. (collectively, Intervenors.)

Hemingford Co-Operative Telephone Company, the Rural Independent Companies, Elsie Communications, Inc., and Dalton Telephone Company, Inc., also filed motions to dismiss on December 11, 2003. Oral argument on the motions to dismiss was held on January 6, 2004. The motions to dismiss were denied pursuant to an order, dated January 13, 2004.

The January 13, 2004 order, also scheduled the hearing on this matter for April 6, 2004, and set forth deadlines for discovery and the filing of testimony and exhibits. Notice of this order was mailed to interested parties on January 14, 2004.

E V I D E N C E

Qwest is the successor-in-interest to US West Communications, Inc. (US West) and is currently the incumbent

local exchange carrier (ILEC) in 63 exchanges in Nebraska Local Access Transport Areas (LATAs) 644 and 646. Further, pursuant to an order entered on October 7, 1998, in Application C-1788, Qwest (then US West) was granted authority to provide competitive local exchange service in the local exchanges in LATA 958 served by Alltel (f/k/a Aliant Communications Co.).

Mr. Robert Lanphier testified on behalf of Qwest. Mr. Lanphier testified that Qwest currently employs approximately 2,000 employees in Nebraska and 32,000 employees, including 27,000 members of the Communications Workers of America and/or the International Brotherhood of Electrical Workers, throughout a 14 state region.

At the close of 2003, Qwest served approximately 340,000 resident, business and government lines in Nebraska and over 14.2 million throughout its operating territory. Mr. Lanphier further testified that Qwest currently has approximately \$42.7 billion in gross property, plant and equipment and reported \$11.3 billion in operating revenue and \$2 billion in operating income for the year 2003.

Mr. Lanphier testified that Qwest would draw on its resources and employees to provide service throughout Nebraska. Mr. Lanphier further testified that granting Qwest's application would lead to greater competition and alternatives for customers leading to greater accessibility and lower costs.

The intervenors presented no witnesses or exhibits. However, the intervenors raised concerns regarding Qwest's financial stability and its commitment to providing service in more rural areas of the state. The intervenors further expressed concerns regarding cross-subsidization between Qwest's competitive local exchange carriers (CLEC) and ILEC operations. Mr. Lanphier testified that Qwest would maintain separate records of the results of its CLEC and ILEC operations.

#### 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 Federal Telecommunications Act of 1996 (Act).

Qwest has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide competitive local exchange service in the requested service territories in the state of Nebraska. No party in this proceeding refuted Qwest's competence.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide competitive local exchange service in the requested territories. All telecommunications carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set forth herein.

Before Qwest is allowed to provide competitive local exchange service, it must either:

- (a) Through negotiation or arbitration, 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 tariff, purchase rates from that tariff, file its own tariff and receive Commission approval of its tariff.

This order does not terminate, waive nor 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 carrier 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 competitive local exchange service in any area in the state of Nebraska, Qwest must file and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of the Neb. Admin. R. & Regs. Title 291, ch. 5.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Qwest Corporation's application to amend its certificate of public convenience and necessity to provide competitive local exchange service in all exchanges within the State of Nebraska in which Qwest is not currently a certified local exchange carrier is 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 inter-connection, services or network elements from a rural telephone company to the Commission for its approval.

IT IS FURTHER ORDERED that, to the extent 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. Title 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 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 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 the 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, together with the appropriate filing fee.

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.

Applicant shall maintain and present the financial results of its Nebraska CLEC activities separately from its Nebraska ILEC activities.

IT IS FURTHER ORDERED that before commencing service in Nebraska that the Applicant file a tariff and pay appropriate filing fees 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 competitive local exchange telecommunications services in the state of Nebraska in the requested service territories set forth herein.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of May, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director