

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3201
of Qwest Communications)
Corporation seeking authority to)
operate as a competitive local)
exchange carrier of) GRANTED
telecommunications services)
within the state of Nebraska.) Entered: December 14, 2004

APPEARANCES:

For the Applicant:

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BY THE COMMISSION:

On May 6, 2004, Qwest Communications Corporation (QCC or applicant) of Denver, Colorado, filed an application seeking authority to operate as a competitive local exchange carrier (CLEC) within the state of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 7, 2004. Petitions of formal intervention were filed by Cox Nebraska Telecom LLC; Nebraska Technology and Telecommunications Inc.; NICE-BCS, a group of rural independent companies; and by the Rural Independent Companies (RIC). A Motion to Dismiss was filed by RIC, Dalton Telephone Company, Elsie Communications Inc. and Hemingford Cooperative Telephone Company on July 6, 2004. On August 9, 2004, Qwest filed its Response to Motions to Dismiss and supplemented its application to cure the alleged deficiencies. On August 31, 2004, the Commission entered an order overruling the Motion to Dismiss.

A hearing on the application was held on October 20, 2004, in the Commission Hearing Room. Appearances entered were as indicated above.

E V I D E N C E

In support of its application QCC called Mary Ferguson-LaFave (Ms. LaFave) as its witness. Ms. LaFave is the Director of Public Policy with Qwest Service Corporation. She testified that QCC is a wholly-owned subsidiary of Qwest Services Corporation (QSC). Qwest Corporation, the incumbent local exchange carrier, (ILEC) is an affiliate of QCC and is wholly owned by QSC. In turn, QSC is fully-owned by Qwest Communications International (QCII).

Ms. LaFave testified that QCC has received CLEC certification in 11 states within its 14-state region in which QC is an ILEC. On December 3, 2004, Qwest counsel filed a Notice of Supplemental Authority informing the Commission that QCC has received a certificate to provide local exchange service in Iowa. In addition, Ms. LaFave testified that QCC received authority to operate as an interexchange carrier in Nebraska.

According to Ms. LaFave, QCC intends to offer a full set of products to customers based on market demand, including local, long distance, ATM and frame-dedicated Internet access. QCC's primary focus initially will be on governmental agencies as well as medium to large businesses. QCC will provide its services using its own infrastructure as well as either reselling local services and/or purchasing unbundled network elements (UNEs.) Ms. LaFave testified that QCC also currently offers a voice-over Internet Protocol (VoIP) service.

Ms. LaFave requested that the Commission not impose the requirements of its findings made in Docket No. C-1839 on QCC. Rather, QCC believes that the state of competition has progressed since 1998 when the Commission issued its findings and thus believes that the limitations have no relevance in today's marketplace, particularly in Omaha.

Ms. LaFave further testified that QCC's application will not have an impact on any rural exemption claimed by a rural incumbent carrier. Rather than seeking interconnection with another carrier, QCC will seek to opt into Qwest Corporation's statement of generally available terms and conditions (SGAT.)

Ms. LaFave testified that public interest is principally served because QCC would be one more viable competitor. With competition comes innovation, lower prices and more choices. Ms. LaFave testified that applying the Commission's findings in Docket No. C-1839 to QCC would adversely affect public interest.

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).

The Commission finds applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange service in the state of Nebraska.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide interexchange and 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 the applicant is allowed to provide local exchange service to its users, 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 local exchange service in any area in the state of Nebraska, applicant must file tariffs in accordance with the provisions of Section 002.21 of the Neb. Admin. R. & Regs. Title 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 ILECs pursuant to Section 251(c) of the Act. This limitation includes those set forth in Docket No. C-1839, in which the Commission provided conditions on the offering of service by an in-region affiliate CLEC. On the record Qwest requested that the Commission not apply the limitations set forth in Application No. C-1839/PI-22. However, to lift the limitations for Qwest in this proceeding and not Alltel, whose authority is not before us, would not serve the public interest. Further, the Commission finds that it would be unfair to lift or change the currently applicable limitations for Qwest in its CLEC application hearing and not afford all interested parties proper notice. In light of the testimony of Qwest regarding the state of competition in Nebraska, however, the Commission encourages Qwest to immediately file a request to terminate the limitation of service offerings within the affiliate ILEC's service territory consistent with the direction in Docket No. C-1839/PI-22. The Commission will process Qwest's request on an expedited basis. The Commission staff is directed to work with Qwest on any questions or issues with this filing.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-3201 be, and hereby is, granted and Qwest Communications Corporation, is authorized to operate as a local exchange carrier of telecommunications services within the state of Nebraska to the extent provided herein.

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 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 any other interexchange and 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 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.

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 before commencing service in Nebraska that the 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 state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of
December 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director