

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Joint) Application No. C-4949
Application of Dalton)
Telephone Company, Inc.,)
Dalton Telecommunications,) ORDER ON MOTION
Inc., and Elsie)
Communications, Inc.,)
Colorado City, Colorado,)
seeking authority to join in)
guaranteeing long-term)
indebtedness.) Entered: October 31, 2017

BY THE COMMISSION:

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

By Application filed September 7, 2017, Dalton Telephone Company, Inc., Dalton Telecommunications, Inc., and Elsie Communications, Inc., (Applicants) of Colorado City, Colorado, seek authority to join in guaranteeing long-term indebtedness. Notice of the application appeared in The Daily Record, Omaha, Nebraska, on September 22, 2017.

Dalton and Elsie are Nebraska corporations with their principal offices located in Dalton. DTI is a North Carolina corporation with its principal office also located in Dalton. Applicants are engaged in the provision of telecommunications services in the State of Nebraska. Dalton and Elsie currently provide basic local exchange service in the areas set forth on maps on file with the Commission. Dalton and DTI operate as interexchange carriers in the State of Nebraska. Applicants are subsidiaries of USConnect Holdings, Inc. ("US Connect").

USConnect and CoBank executed an Amended and Restated Credit Agreement.¹ The modified financing will consist of (a) a revolving credit facility in an aggregate principal amount at any time outstanding not to exceed \$3,000,000, (b) a term loan facility in an aggregate principal amount not to exceed \$20,500,000, and (c) a delayed draw term loan

¹ On November 25, 2013, the Commission approved the issuance by Dalton, DTI, and Elsie of collateralized guarantees of indebtedness as provided in a Credit Agreement between USConnect and CoBank, ACB ("CoBank") in Docket C-4634.

facility in an aggregate principal amount not to exceed \$10,500,000.

The proceeds from the Credit Facilities will be used by USConnect to continue to finance the prior acquisition and continued operation of telecommunications companies, including Dalton, DTI, and Elsie, with the potential to be used to accomplish the acquisition of an additional target company. According to the Applicants, use of the continued financing of USConnect's acquisition of Dalton, DTI, and Elsie is reasonably required for purposes of the Applicants. Further, according to the application, regulatory approval of the refinancing provided for in the Amended Credit Agreement is required in Nebraska alone.

The Applicants seek a Commission determination on the requirement that it pay a \$2,500.00 filing fee to process the above-captioned application. In the alternative, in the event that the Commission concludes that the application does seek approval of an issuance of securities, then Applicants request the Commission find and declare Applicants are controlled by the FCC and therefore the application is not required pursuant to Neb. Rev. Stat. § 75-148.

Applicants state "[n]o provision of § 75-148 supports Staff's interpretation that the § 75-150 reference to "issuance of securities" includes issuance of notes or evidence of indebtedness." Applicants claim the filing fee referenced in § 75-150 pertains to the issuance of stocks. When there is no stock at issue, Applicants state, the filing fees set forth in § 75-150 were never intended to apply.

Section 75-150, entitled Securities; issuance; fees; expenses, reads in pertinent part,

No order authorizing the *issuance of securities* shall become operative until the Applicant pays to the commission fees as follows: Upon applications totaling not more than twenty-five thousand dollars, the fee shall be twenty-five dollars; and upon applications totaling more than twenty-five thousand dollars, the fee shall be twenty-five dollars for the first twenty-five

thousand dollars, one dollar per one thousand dollars for the next seventy-five thousand dollars, and twenty-five cents per one thousand dollars for all amounts in excess of one hundred thousand dollars, except that the total fee shall in no case exceed the sum of two thousand five hundred dollars. The fee shall be computed on the par value principal amount of the stock, or in the case of no par stock, on the declared or offering price, whichever is greater. The commission shall remit the fees received to the State Treasurer for credit to the General Fund. [Emphasis Added].

The term securities is defined as "something given, deposited or pledged to make certain the fulfillment of an obligation" and as "an instrument of investment in the form of a document providing evidence of its ownership." Merriam-Webster (2017). Black's Law Dictionary defines securities as "negotiable or nonnegotiable instruments or financing instruments that can be sold and bought on the financial market."² Stocks, bonds, debentures, and notes are included in the definition of securities.³

Historically, the Commission has interpreted notes of indebtedness to be included in the definition of securities subject to the requirements of §§ 75-148 through 75-151.⁴ Upon review, the Commission finds its historic interpretation is reasonable. The provisions of §§ 75-148

² Black's Law Dictionary 1354 (6th ed. 1990).

³ See *id.*

⁴ See, e.g., Docket C-997 *In the Matter of the Application of the Rock County Telephone Company, Blair, Nebraska which seeks authority to modify existing loans and certain documents evidencing loans with the Rural Electrification Administration*, GRANTED (August 16, 1993) (finding the application for loan approval was "governed specifically by Neb. Rev. Stats. 75-146 to 75-151 (Reissue 1990) and they prescribe that securities issued by common carriers are subject to approval of the Nebraska Public Service Commission"). See also Docket C-1837, *In the Matter of the Application of GTE Midwest Incorporated, Wentzville, Missouri, which seeks an order authorizing it to issue long-term promissory notes to GTE Corporation*, GRANTED (August 25, 1998) (application was governed by Neb. Rev. Stat. Sections 75-146 to 75-151 (1996) which prescribe that securities issued by common carriers are subject to approval by this Commission).

through 75-151 should be read and interpreted in an internally consistent manner. The phrase issuance of securities in § 75-148 which includes stocks, bonds, notes or other evidence of indebtedness has historically been read to be consistent with the use of the phrase "issuance of securities" in § 75-150. Had the legislature meant only stock transactions in § 75-150, we believe that such limiting language would have been used. Accordingly, § 75-150 encompasses both stock issuances as well as debt issuances.

Although § 75-150 specifies how to calculate the value of stock, the Commission does not now, and has not historically, read the fee structure set forth in the preceding sentence § 75-150 to apply only to stock issuances. Had the fee structure set forth in § 75-150 only been applicable to stock issuances, then that would leave the Commission without a specific fee requirement in statute for applications seeking approval of other types of security issuances. We do not think that interpretation comports with the remaining portions of § 75-150 or §§ 75-148 through 75-150 as a whole. In addition, if the legislature simply meant to apply the fee structure to stock issuances, the Commission believes they were aware of the distinction as the use of the term stock appears in other places in §§ 75-148 through 75-151 and such distinction would have been made in the language of the statute.

The Commission's practice of historically applying the same filing fee structure to debt issuances as well as stock issuances is also reflected in its filing fee schedule. The Commission's filing fee schedule specifies fees for all securities issuances vary by the amount of the issuance but is capped at \$2,500 per § 75-150. If the Commission had contemplated a separate filing fee would be applicable depending upon the type of security issuance filed pursuant to § 75-150, the Commission would have clearly specified that such a distinction existed.

The Commission further finds that the application is subject to Commission approval as required by §§ 75-148 to 75-150. Accordingly, we determine the application shall be subject to the required \$2,500.00 filing fee. The remainder of the filing fee must be remitted no later than thirty (30) days from the date of this Order. An order on the

Application No. C-4949

Page 5

merits of the application will not be issued prior to the remittance of the required filing fee.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Applicants may have thirty (30) days from the date of this Order in which to file the required filing fee as determined above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 31st day of October, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Mary Redden

Crystal Knodes

Frank E. Landis

//s//Frank E. Landis

//s//Tim Schram

Tim Schram
Chairman

ATTEST:

Richard A. ...

Executive Director