BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In The Matter of the Jato Communications Corporation, Denver, Colorado, a Holder of a Certificate of Authority to Provide Local Exchange Tele-Communications Services and to Provide High-speed Data Transmissions within the state of Nebraska.	Application Nos. C-1918, C-2010 and C-2070 ORDER FOR SUSPENSION OF AUTHORITY Entered: March 20, 2001

BY THE COMMISSION:

The Commission granted Jato Communications Corporation (Jato) a certificate of public convenience and necessity to provide local intrastate interexchange (intraLATA and interLATA) digital communications services to customers in the State of Nebraska, pursuant to Application No. C-1918 on October 8, 1998. The Commission also approved Jato's application to provide competitive local exchange (CLEC) services within the State of Nebraska on March 5, 1999, pursuant to Application No. C-2010. On August 3, 1999, the Commission also granted Jato's application for approval of its corporate reorganization and transfer of certificates, pursuant to Application No. C-2070.

On January 10, 2001, the Commission received a letter from Mr. Leonard Allsup, President and CEO of Jato, notifying the Commission that Jato had "been forced to discontinue its DSL services in all markets." The Commission subsequently received information that the services of Jato's Nebraska customers had had their services discontinued.

On January 23, 2001, the Commission entered an order to show cause allowing Jato to explain why its certificate of authority in Nebraska should not be suspended or revoked in whole or in part. A hearing on the order to show cause was rescheduled for February 21, 2001, at 9:30 a.m. in the Commission's Hearing Room. On February 14, 2001, the executive director of this Commission sent by first class mail a copy of the notice of hearing to all interested parties.

At the hearing, Jato presented one witness, Mr. Andrew R. Newell, counsel for Jato.

Mr. Newell explained that Jato regretted not being able to provide its customers with meaningful advance notice of its cessation of operations. Mr. Newell explained that intense efforts

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by Jato during the spring and summer of 2000 to react to tightening capital markets and cash flow problems forced Jato during the fall of 2000 to aggressively search for a merger partner that could support its DSL operation until profitability could be achieved. Several potential partners and purchasers expressed serious interest in Jato, but proposed transactions could not be finalized. Jato engaged in last-ditch efforts to sell the company in late 2000, but those efforts also proved unsuccessful. Once negotiations collapsed, Jato immediately ceased operations and sent notices to customers, regulatory agencies and incumbent local exchange carriers (ILECs) that it would no longer be able to offer services.

Jato's assets are currently under the control of its primary secured creditor, Lucent Technologies (Lucent), through a separate subsidy of Lucent established to dispose of Jato's assets. As a secured creditor, Lucent has the authority to sell and transfer Jato's assets to satisfy its outstanding debt.

Mr. Newell testified that once its operating authority was obtained, Jato made a substantial capital outlay in Nebraska and throughout its operating service areas in securing and constructing collocation space within Qwest Corporation's (Qwest) central office facilities pursuant to Jato's interconnection agreement with Qwest. Jato has installed expensive DSL Access Multiplexers (DSLAMs), ATM aggregation equipment, routers and other necessary equipment in several Qwest central offices in Nebraska through which Jato provided its unique form of DSL services.

Mr. Newell explained that fully-equipped collocation spaces have tremendous value to other competitive carriers. Having already paid the significant costs of acquiring, conditioning and equipping the spaces, and having already endured the lengthy delays involved in constructing the collocation spaces, a competitive carrier could much more easily enter the competitive marketplace by acquiring Jato's interest in the collocation spaces. However, in order to transfer these fully-equipped collocation spaces, Jato must maintain its certificate of authority and enforceable interconnection agreements. Without CLEC authority, Mr. Newell testified that Jato's interconnection agreements may be subject to termination, and thus not transferable, wasting millions of dollars of investment and eliminating the ability of other competitive carriers to enter the marketplace in a rapid and cost effective manner by acquiring Jato's interest in the collocation spaces.

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Mr. Newell assured the Commission that Jato is now a shell organization with no ability or intent to again actively provide services to customers. Jato's only interest is in maximizing the value of its existing assets and preserving the opportunity for productive use of its costly collocation spaces by other competitive service providers. Mr. Newell testified that Jato, through the Lucent subsidiary controlling its assets, is in active and serious negotiations with one or more parties for purchase of its assets and that sale transaction(s) could likely be accomplished within 120 days. Mr. Newell further testified that a partial suspension of Jato's authority in Nebraska, preventing it from offering services to customers, would be acceptable while Jato seeks to consummate one or more sale transactions.

OPINION AND FINDINGS

The Commission's Telecommunications Rules and Regulations provide that a telecommunications company must demonstrate that it has sufficient financial, managerial and technical resources to provide its proposed telecommunications services in the State of Nebraska before it can be certificated by the Commission to provide such services. The provision of the applicant's services must also be in the public interest, protect the public safety and welfare, and safeguard the rights of consumers. While Jato satisfied the Commission's technical, financial and managerial criteria at the time it was certificated to provide services in the State, it is clear that Jato cannot now satisfy any of these criteria. In the absence of specific rules and regulations governing the disposition of a company's certificate of authority when it ceases to provide services in the state, the Commission must determine what remedial actions are in the public interest, protect the public safety and welfare and safeguard the rights of customers.

It is apparent from the evidence that Jato is not currently capable of providing active telecommunications services to customers in the state due to its financial collapse. However, if Jato's certificate is left intact, Jato could, in fact, legally provide services without benefit of satisfying the Commission's standards of financial, technical and managerial competency. Such a result would not safeguard the interests of consumers or otherwise be in the public interest. Therefore, Jato should not be permitted, without a showing to the Commission of its competence in these required areas, to provide any form of services to customers in the State.

The Commission recognizes, however, the potential value of

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Jato's collocation spaces and facilities to other potential competitive service providers, particularly in light of the recent scarcity of capital resources in the telecommunications industry, especially the DSL industry. The Commission also finds that the transfer of Jato's collocation spaces and facilities to another competitive provider, even without the satisfaction of prior charges incurred by Jato, would benefit ILECs by providing them with another productive user for Jato's collocated facilities and the ILECs' related unbundled network elements (UNEs) and services. Having the opportunity to obtain rapid and economical access to Jato's collocation spaces and facilities could stimulate other competitive providers to offer DSL services to replace those lost as result of Jato's cessation of business. Encouraging competitive entry into the marketplace is in the public interest and consistent with the goals of the Commission as well as relevant state and federal telecommunications laws. Maintaining Jato's certificate of authority for a limited period of time to permit the orderly sale of Jato's assets could, therefore, promote competitive entry, which would be in the public interest.

The Commission, therefore finds that it should suspend the certificate of authority issued to Jato Communications Corporation in C-1918, C-2010 and C-2070.

The Commission further finds that the period of suspension should be set at 180 days to allow ample time, without the need for interceding administrative action, to locate a buyer for its assets.

O R D E R

IT IS THEREFORE ORDERED by the Commission as follows:

1) Jato's certificate of public convenience and necessity is suspended in accordance with the following terms:

   a) Jato may not operate a telecommunications network for the purpose of serving customers in the State of Nebraska.

   b) Jato may not acquire or obtain customers on behalf of itself or any other entity.

   c) Jato's certificate of authority is otherwise maintained to permit the orderly sale of Jato's assets, including collocation arrangements with

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Qwest pursuant to their existing interconnection agreement, to any holder of a certificate of public convenience and necessity for the purpose of providing telecommunications services in the State of Nebraska.

d) Jato's certificate shall terminate 180 days following the date of this order or upon notice from Jato or its authorized representative that the sale of Jato's assets has been completed, whichever comes first.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of March, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

Rod Johnson

//s//Anne C. Boyle
//s//Daniel G. Urwiller

Anne C. Boyle
Vice Chairman

ATTEST:

Executive Director

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