

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-2554
KMC Data, LLC, Bedminster, New)
Jersey, seeking authority to obtain)
a Certificate of Public Convenience) GRANTED
and Necessity to provide)
competitive local exchange services)
on a combined resale and facilities)
basis and provide resold)
interexchange service in the state)
of Nebraska.) Entered: August 7, 2001

BY THE COMMISSION:

By its application filed June 20, 2001, KMC Data, LLC (Applicant) seeks authority to provide local exchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on June 22, 2001. No protests or petitions to intervene in the application were filed. Therefore, the Commission deems it reasonable and proper to proceed with the disposition of this application by its modified procedure in accordance with Rule 018.03 of the Rules of Commission Procedure.

E V I D E N C E

The application in the above docket averred as follows:

Applicant is a privately held company organized under the laws of the state of Delaware that has its headquarters in Bedminster, New Jersey. Applicant has obtained authority to transact business in the state of Nebraska. Applicant currently has been certified to provide interexchange and local exchange services in the state of Montana, and has applications pending in all fifty states. The applicant applied for authority in AUS West Communications@ service territory, now Qwest Communications.

The application stated that applicant proposes to provide local service using its own facilities and through resale of incumbent carrier facilities. The applicant will engage in direct marketing to notify Nebraska businesses and residents that its services are available. Interested customers will pay the cost of the local service plus the applicable installation charges.

The application stated that the applicant has sufficient managerial and technical resources and abilities to provide local exchange and interexchange telecommunications services in the proposed service territory. The applicant's management team is composed of individuals that

have many years of combined technical, directorial and business experience. The application also showed that the applicant has sufficient financial resources to implement and provision its local exchange telecommunications services in Nebraska. The application included up-to-date financials which demonstrate that applicant has the financial resources required to provide the proposed telecommunications services.

The application further showed that granting the application will promote the public interest by providing consumers a choice in providers. The applicant's provisioning of service will enhance the goals of universal service, promote the policies set forth in the Telecommunications Act of 1996 (the Act), and advance the objective of the Commission which is set forth in Application No. C-1128, Progression Order, dated December 19, 1995, relating to the implementation of local exchange competition.

The application stated that customers may inquire about bills through a toll-free number during regular business hours. Customers will have access to the operator services as well as 911 services through the existing incumbent local exchange carriers (ILECs). Applicant will contract with ILECs to provide customers with directory listings and for the distribution of directories.

No other parties introduced testimony or evidence at the hearing.

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 Act.

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

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 or 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 interexchange or local exchange service in any area in the state of Nebraska, applicant 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.

As a provider of interexchange and 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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2554 be, and hereby 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 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 B 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 interexchange and local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

ATTEST:

Executive Director