

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3145
of Southwestern Bell)
Communications Services Inc.)
d/b/a SBC Long Distance,) HEARING CANCELLED AND
Pleasanton, California, for) APPLICATION GRANTED
Authority to Operate and Offer)
Local Exchange and Exchange)
Access Telecommunications)
Services Throughout the State of) Entered: April 27, 2004
Nebraska.)

BY THE COMMISSION:

On February 24, 2004, an application was filed by Southwestern Bell Communications Services Inc., d/b/a SBC Long Distance (Applicant) of Pleasanton, California, seeking a certificate of authority to operate as a provider of resale and facilities-based competitive local exchange and exchange access services within the State of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska on February 27, 2004.

Protests were filed by Arlington Telephone Company; Blair Telephone Company; Clarks Telecommunications Co.; Consolidated Telephone Company; Consolidated Telco, Inc.; Consolidated Telcom, Inc.; Eastern Nebraska Telephone Company; Great Plains Communications, Inc.; Hartington Telecommunications Co., Inc.; Hemingford Cooperative Telephone Company; Hershey Cooperative Telephone Company, Inc.; K&M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Rock County Telephone Company; Stanton Telephone Co., Inc.; and Three River Telco.

Pursuant to a stipulation between Applicant and Protestants, Applicant agreed to limit its application to restrict the authority sought to provide competitive local exchange services in those service territories presently served by Qwest Corporation and ALLTEL Nebraska, Inc., as incumbent local exchange carriers. In exchange, the Protestants would withdraw their objection to the application, and the hearing currently scheduled for May 10, 2004 would be cancelled.

Based upon the stipulation entered, this application is processed pursuant to the Commission's Rule of Modified Procedure.

EVIDENCE

Applicant is a Delaware corporation with its principal place of business in Pleasanton, California. Applicant is authorized to transact business as a foreign corporation in the State of Nebraska and will do business under the registered trade name of "SBC Long Distance."

Applicant proposes to initially provide facilities-based local exchange services using Unbundled Network Elements-Platform (UNE-P) leased or purchased from local exchange carriers. Applicant may further resell the local exchange services of other Nebraska certificated local exchange carriers. Applicant may purchase switching equipment and network facilities, or construct network facilities in the future. Applicant proposes to offer competitive facilities-based and non-facilities-based local exchange services, including but not limited to, basic local exchange service, custom calling features, CLASS services and data services to residential and business customers. Applicant further proposes to provide exchange access services to interconnecting carriers. Applicant seeks authority to provide competitive local exchange services only in those service territories presently served by Qwest Corporation and ALLTEL Nebraska, Inc., as incumbent local exchange carriers.

On December 13 and 17, 2002, Applicant received "Notices of Violation and Intent to Assess and Administrative Penalty" by the Legal and Enforcement Division of the Texas Public Utilities Commission (TPUC) alleging failures by Applicant in filing responses to 17 customer complaints within the time required by the TPUC. This matter is pending and Applicant asserts that it is working with TPUC to resolve the complaints.

Applicant asserts that its proposed services will serve the public interest in that it will result in cost advantages to subscribers, provide greater value to subscribers through better quality services, innovative telecommunications services, increased consumer choice in telecommunications service and alternative billing options, efficient use of existing telecommunications resources and additional access revenues to local exchange providers.

OPINION AND FINDINGS

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 services;
- 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).

Applicant 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 service areas presently served by Qwest Corporation and ALLTEL Nebraska, Inc., as incumbent local exchange carriers 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 services.

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 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 competitive 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 incumbent local exchange carriers pursuant to Section 251(c) of the Act.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the hearing scheduled for May 10, 2004 is hereby cancelled and Application No. C-3145 be, and hereby is, granted as amended by the stipulation of the parties and Applicant, is authorized to provide competitive local exchange services in those service territories in Nebraska presently served by Qwest Corporation and ALLTEL Nebraska, Inc. as incumbent local exchange carriers.

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. §§ 86-302 through 86-314 (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 competitive local exchange services in all areas of the state of Nebraska in which Qwest Corporation and ALLTEL Nebraska, Inc. provide service as incumbent local exchange carriers.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of
April, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director