

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3273
of VCI Company, d/b/a Vilaire)
Communications, Inc. Lakewood,)
Washington, seeking a)
certificate of public)
convenience and necessity as a)
local competitive exchange)
carrier in Nebraska.) Granted In Part
)
In the Matter of the Application)
of VCI Company d/b/a Vilaire for)
designation as an eligible)
telecommunications carrier)
providing service to customers)
under the Nebraska Telephone)
Assistance Plan.) Entered: May 11, 2005

BY THE COMMISSION:

By its application filed September 27, 2004, VCI Company, d/b/a Vilaire Communications, Inc. of Lakewood, Washington, (Applicant or VCI) seeks a certificate of public convenience and necessity as a local competitive exchange carrier in Nebraska. Additionally, by its application filed October 4, 2004, VCI seeks designation as an eligible telecommunications carrier providing service to customers under the Nebraska Telephone Assistance Plan. Amended Notice of the combined application was published in the Daily Record, Omaha, Nebraska, on October 11, 2004.

On October 29, 2004, an Intervention was filed on behalf of the Rural Independent Companies: Arlington Telephone Company; Blair Telephone Company; Clarks Telephone Company; Consolidated Telephone Company; Consolidated Telco, Inc.; Consolidated Telecom, Inc.; Eastern Nebraska Telephone Company; Great Plains Communications, Inc.; K & M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Rock County Telephone Company; and Stanton Telephone Co., Inc.

On November 12, 2004, Interventions were filed on behalf of Arapahoe Telephone Company d/b/a ATC Communications; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Curtis Telephone Company; Diller Telephone Company; Glenwood Telephone Membership Corporation; Hartman Telephone Exchanges, Inc.; Hooper Telephone Company d/b/a WestTel Systems; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company; and Wauneta Telephone Company (Intervenors). A Stipulation was filed by the Applicant and the Intervenors on January 6, 2005 with respect to the CLEC application only.

That portion of Vilaire's application seeking designation as an ETC will be addressed in a separate order. This order deals only with Applicant's request for CLEC authority.

E V I D E N C E

Applicant is a corporation organized under the laws of the state of Washington. Applicant is a certified CLEC and is providing telecommunications services in the states of Washington, Oregon and Wyoming, with approval to provide such in Montana, Idaho and California.

Applicant seeks authority to provide both facilities-based and resold local exchange service to and from all points in the State of Nebraska. Pursuant to the stipulation between Applicant and Intervenors filed on January 6, 2005, Applicant has agreed that it will not seek at this time to provide service in any area served by any incumbent local exchange carrier in Nebraska that is eligible for a small or rural carrier exemption pursuant to Section 251(f) (1) of the Federal Act.

Applicant intends to provide the full range of local exchange services to permit flexibility in its service offerings. These service offerings will be available on a full-time basis, 24 hours a day, seven days a week. The Applicant intends to market to credit-challenged residential customers. Also, Applicant's local exchange services may include basic residential local exchange services (flat rate service, operator access, etc.); residential customer and class features (call waiting, caller ID, call forwarding, etc.); and residential ancillary services (911, directory assistance, etc.). Additionally, the Applicant states that all complaints concerning charges, practices, facilities or services will be investigated promptly and thoroughly through its Customer Care Department.

The Applicant has provided a list of its directors and officers. Also, the Applicant states that it has sufficient managerial and technical experience to provide the proposed services. Biographical information on the Applicant's key management is attached to the Application. The Applicant further alleges it is financially qualified, and that it will have all debts guaranteed through its owners. The Applicant has demonstrated its financial ability to operate as a local service provider in the State of Nebraska. Additionally, the Applicant attached its proposed local exchange tariff.

Further, Applicant has no immediate plans to construct facilities in the state of Nebraska. However, the Applicant intends to provide facilities-based services utilizing the unbundled network elements platform ("UNE-P") of the incumbent local exchange carriers. Therefore, the Applicant will provide both facilities based and resold services throughout Nebraska and it may lease facilities (including UNE's) in connection with its provision of service. The Applicant further states it may expand its operations as market conditions warrant and as such areas become open to competition.

The Applicant requests in its Application that the Commission waive Neb. Admin. R. & Reg. Title 291, ch. 5 § 002.24B as it relates to the regulation of the Applicant by requiring the Applicant to keep its books according to the uniform system of accounts. The Applicant employs its accounting system in accordance with Generally Accepted Accounting Principles (GAAP). The Applicant states it will comply with all applicable Commission rules except those expressly waived by the Commission pursuant to this Application.

The Applicant contends that granting this application will promote the public interest by increasing competition in the provision of local telecommunications services in Nebraska. Further, the Applicant states that its entry will promote greater diversity and innovation in service offerings and will increase incentives for lower prices and improve customer service among other carriers.

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 local exchange service in the state of Nebraska. The Commission approves this application in accordance with the terms of the stipulation. Accordingly, Applicant is granted authority to provide local exchange services throughout the state of Nebraska in areas served by the an incumbent local exchange carrier in Nebraska that is not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Applicant does not seek to provide service to customers in those small or rural territories at this time.

If Applicant desires to provide service those customers in the small or rural company territories which qualify for an exemption pursuant to Section 251(f)(1), Applicant must first make a subsequent application to the Commission to extend its certificate of authority to those areas.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide 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 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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application C-3273 be, and hereby is, granted as amended by the above-referenced stipulation.

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. §§ 86-301 through 86-315 (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 the Applicant may maintain its financial records in accordance with Generally Accepted Accounting Principles, and therefore, the Commission waives Neb. Admin. R. & Reg. Title 291, ch. 5 § 002.24B with regard to this Applicant.

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 within 30 days from the entry of this order that the applicant file a tariff with the Commission as required by state statutes and the Commission's regulations.

IT IS FURTHER ORDERED that the Applicant is granted authority to provide local exchange services throughout the state of Nebraska in areas served by an incumbent local exchange carrier in Nebraska that is not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Applicant is not authorized to provide service to customers in those small or rural territories at this time.

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.

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MADE AND ENTERED at Lincoln, Nebraska, this 11th day of May, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

Anne J. Boyle

Tom Johnson

//s// Frank E. Landis

//s// Gerald L. Vap

Chairman

Gerald L. Vap

ATTEST:

John P. Sullivan

Deputy Director