

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2244
of Gary and Barbara McCormick of)
Norden, Nebraska, currently)
residing within the service area of) GRANTED AS MODIFIED
Three River Telco seeking authority)
to obtain telephone service from)
the Valentine exchange of US West)
Communications, Inc.) Entered: June 20, 2000

BY THE COMMISSION:

By application filed March 10, 2000, Gary and Barbara McCormick (Applicants, Applicant), Norden, Nebraska, seek authority to retain telephone service from the Valentine exchange of US West Communications, Inc. (US West). Applicants currently reside in the Springview exchange of Three River Telco (Three River). It should be noted that applicants do not currently receive telephone service from either of these carriers at the present time, instead relying on cellular service for their telecommunication needs.

Notice of this application was published in The Daily Record on March 15, 2000. On April 4, 2000, the Commission received a copy of a letter sent by Three River to the McCormicks informing the applicants that they declined to concur in the boundary change citing their economic investment in the area. A video hearing was set for June 6, 2000, in the Commission Library in Lincoln, Nebraska, and the Cherry County Extension Office in Valentine, Nebraska. Notice of the video-conference was mailed to the parties by the executive director of this Commission on May 22, 2000.

Appearing at the hearing were Barbara McCormick, who appeared pro se, Neil Classen, manager of Three River Telco, who also appeared pro se. Michael Loeffler appeared for the Commission. Also present were Bob Lanphier for US West; Dick Palazzolo, telecommunications specialist for the Commission; and Gene Hand, director of communications for the Commission.

Barbara McCormick testified that in the first week of February 2000, she received information from a US West representative that she would be able to retain US West service when the McCormicks physically moved their home to a new location approximately four and one-half miles away in the rural village of Norden. Prior to the move, but after the foundation for the house had been built, the McCormicks were told that the lot on which they planned to build was in the Three River Telco area. She noted that the house was placed on land no further than 150 feet from a trailer house which was receiving telephone service from US West. The Commission also received evidence from the applicant that demonstrated that a significant community of interest with the Valentine exchange exists in that the Valentine exchange represented nearly all, if not all, of the business that operates out of their home, which includes a bed and breakfast, a masonry business and a house cleaning business. Mrs. McCormick indicated that toll charges would deter

the persons with whom they do business in the Valentine exchange from calling them for business.

Neil Classen, manager of Three River Telco, testified that they opposed the boundary change because of the affect that it might have on the other subscribers in the area. He noted that his company had recently placed a digital loop carrier and other investments totaling over \$24,000 within two city blocks of the McCormicks's home. Three River sees the Norden area as one of potential growth. It was this growth that prompted the company to make the investments in the area. He also cited the strengths of his company including fast turn-around on repairs, the provisioning of advanced calling features, Internet access, and the opportunity for subscribers to earn a capital credit.

Gene Hand testified that a review of the boundary maps filed by the phone companies with the Commission in 1981 indicated that the Norden area was still in the US West Valentine exchange. Maps are required to be filed with and approved by the Commission. In rural areas, boundary lines are presumed to be drawn along half- or quarter-mile lines in the section unless otherwise indicated. Mr. Classen testified that the Norden area became part of the Three River Telco exchange pursuant to an agreement reached with US West in 1997.

Richard Palazzolo testified as to his perceptions of the physical layout of the land. He testified that within the Norden area, a trailer house behind the local one-room school building was serviced by a line from US West. As far as he could determine, this US West line has existed in excess of twenty years. He further testified that this seemed to indicate that at least part of the area as it existed constituted a dual service area in which two companies provide local service.

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

The situation before the Commission in the instant case is unique in several aspects. Accordingly, the remedy which we fashion here is one that can only uniquely apply to the applicants in this docket. The solution which we have crafted, we find, represents fairly the interests of the applicants, Three River Telco and US West. We note that the remedy found in this order has the agreement of all the interested parties.

A. Boundary Between Three River Telco and US West

The evidence regarding the boundary that exists between the US West exchange of Valentine and the Springview exchange of Three River Telco seems to lead to the conclusion that the McCormick home and the Norden area reside in the US West Valentine exchange. The boundary maps filed with this Commission represent that Norden lies in the extreme southeast portion of the Valentine exchange and a quarter-mile or less from the boundary between the two companies. The Commission has received additional evidence indicating that the two carriers agreed to a boundary adjustment that places the McCormick residence and the Norden subdivision within the Springview exchange though no map was subsequently filed with this Commission.

Through agreement with the two carriers, this Commission finds that the boundary between the two carriers should be adjusted to reflect the changes agreed to by the two carriers. In support of this decision, we note that there are already four other subscribers of Three River Telco in the Norden area, that Three River Telco has already expended a considerable financial investment in the area and the lack of objection by US West. In accordance with this agreement, we order US West and Three River Telco to file an adjusted boundary map with this Commission within thirty days of the entering of this order.

B. Resolution of the McCormick Situation

Based upon the evidence adduced and having obtained an agreement between the interested parties, we find that the McCormick situation should be resolved as follows. First, we find that the McCormick residence, as moved, in accordance with the findings in Part A above, now resides completely within the Springview exchange. However, because of the unique situation that they find themselves in, we find that the agreement of the parties is consistent with the public interest. Accordingly, we specifically find that:

1. The McCormicks shall subscribe to local exchange service from both US West and Three River Telco. The McCormicks shall be responsible for payments to both carriers based on their tariff rates for residential service. The McCormicks may, at their option, purchase additional vertical services (such as call waiting, caller ID, etc.) from either carrier as it may be available. The McCormicks understand and agree that this will necessitate maintaining two separate lines and two separate telephone numbers and require separate payments to the both companies.

2. The McCormicks will be toll-restricted on their Valentine line in that long-distance calls that are placed to exchanges other than the Valentine exchange area must be placed through their connection with the Three River Telco Springview exchange. Further, both carriers shall be held harmless from errors in dialing by either the McCormicks calling out or for others calling into the McCormick home. Accordingly, the McCormicks agree to such toll restriction and will, within a reasonable time, choose a long distance carrier which serves the Springview exchange.
3. This agreement attaches to the McCormicks personally. This agreement will be extended only to Gary and Barbara McCormick and their sons or daughters. If the McCormicks no longer reside in the home, telephone service will be provided solely through the Springview exchange and Three River Telco or their legal successors, if any. The authority for US West to provide telephone service to the McCormick home will cease upon the failure of Gary or Barbara McCormick or their immediate family to reside in the home. Accordingly, the McCormicks have a duty to timely inform the carriers in both exchanges of their intention to move out of the home in question.
4. The McCormicks agree to pay any construction costs associated with this agreement, except that such construction costs may not exceed those provided in the tariffs of the two carriers as exist on the date of the entry of this order.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2244 be, and it is hereby, granted as modified and consistent with the terms described in this order.

IT IS FURTHER ORDERED that US West and Three River Telco, within thirty days of the entry of this order, furnish this Commission with revised exchange maps which reflect the agreement contained in this order.

IT IS FURTHER ORDERED that applicant shall abide by the terms of the foregoing agreement and to abide by the duties and responsibilities as provided in the agreement including, but not limited to, obtaining service from both US West and Three River Telco, to allow toll restriction on their US West line, to obtain long-distance service from a carrier authorized to do business in the Springview exchange, and to timely notify both carriers, or their legal successors, if any, should they decide to move out of the residence in question.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of June, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Frank E. Landis

Ann C. Boyle

Robert R. Logsdon

//s//Frank E. Landis

Frank E. Landis
Chairman

ATTEST:

Robert R. Logsdon
Executive Director

