

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
MAXCESS, INC. for Authority to)
Compete as a Telecommunications)
Corporation and to Offer Resold and)
Facilities-Based Interexchange and)
Public Local Exchange Telecommu-)
nications Services)

DOCKET NO. 00-2316-01

REPORT AND ORDER

ISSUED: November 21, 2003

SYNOPSIS

Maxcess, Inc. having not filed its annual report for the year 2002 and having not paid its Public Utilities Regulation Fee, the Commission orders the cancellation of the Company's certificate of public convenience and necessity.

By The Commission:

PROCEDURAL HISTORY

On April 6, 2000, Maxcess, Inc. (Maxcess or Company) filed an application "for authority to compete as a telecommunications corporation . . . and to compete in providing resold and facilities-based interexchange and public local exchange telecommunications services . . . in Utah." The application was given Docket No. 00-2316-01. The case was converted into an informal proceeding and there was no hearing held. The Commission granted Certificate of Public Convenience and Necessity No. 2316 on June 26, 2000. The Company was authorized ". . . to provide local and interexchange services and other public telecommunications services, including facilities-based as well as resold services, within the service territory of US West Communications, Inc., within the State of Utah."

The Commission has received a memorandum from the Utah Division of Public Utilities (Division) stating that the Company has not filed its annual report for the year 2002 that was due on March 31, 2003 nor has it paid its Public Utilities Regulation Fee (minimum amount assessed) that was due on July 1, 2003. The Division states that it has sent a number of letters and attempted to telephone a number of people concerning the delinquencies of the Company. The Division has not been able to contact anyone that is presently connected with the Company. All letters have been returned by the U S Postal Service as undeliverable.

Concerning nonpayment of the Public Utilities Regulation Fee, Utah Code Annotated Section 54-5-3 states the following:

(1) If the public utility fee is due and the payment is in default, a lien in the amount of the fee may be filed against the property of the utility and may be foreclosed in an action brought by the executive director of the Department of Commerce in the district court of any county in which property of the delinquent utility is located.

(2) (a) If the fee computed and imposed under this chapter is not paid within 60 days after it becomes due, the rights and privileges of the delinquent utility shall be suspended.

(b) The executive director of the Department of Commerce shall transmit the name of the utility to the

Public Service Commission, which may immediately enter an order suspending the operating rights of the utility.

The Division's memorandum also states that a letter accompanying the Company's annual report for the year 2001 contains the following statement. "Please note that our Company did not provide service of any kind to any residence or business located in the State of Utah during calendar year 2001, nor did we own any real or personal property in the State of Utah." The Division knows of no property that the Company owns in the State of Utah against which a lien could be filed for nonpayment of the Public Utilities Regulation Fee. The fee was due on July 1. Therefore, the 60-day grace period would have ended on August 31. The Commission could enter an order suspending the operating rights of the Company since the fee was not paid within 60 days of the due date. However, the Division recommends that the Company's authority be canceled.

The Division has concluded that the Company has gone out of business. The Division states that it is their understanding that the Company does not now, and never has provided any service in the state of Utah. Therefore, the termination of the Company's authority will have no adverse impact upon any customers in the state of Utah. The Division therefore recommends that the Commission cancel the certificate of public convenience and necessity held by Maxcess, Inc.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

Certificate of Public Convenience and Necessity No. 2316 held by Maxcess, Inc., be and hereby is canceled.

Any person aggrieved by this Order may petition the Commission for review within 20 days of the date of this Order. Failure to do so will forfeit the right to appeal to the Utah Supreme Court.

DATED at Salt Lake City, Utah, this 21st day of November 2003.

/s/ Richard M. Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

G#36050