

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ) Application No. C-3453  
Application of Aero )  
Communications, LLC, Paducah, )  
Kentucky, for authority to ) GRANTED  
operate as a facilities-based )  
local and interexchange )  
carrier of telecommunications )  
services within the state of )  
Nebraska. ) Entered: November 1, 2005

BY THE COMMISSION:

By its application filed July 20, 2005, Aero Communications, LLC (Applicant), Paducah, Kentucky, Applicant seeks authority to operate as a facilities-based local and interexchange carrier of telecommunications services within the state of Nebraska. Notice of the application was published in the Daily Record, Omaha, Nebraska, on August 1, 2005. On September 1, 2005, Petitions of Formal Intervention were filed by 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.; Westel Systems f/k/a Hooper Telephone Company; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company and Wauneta Telephone. Subsequently, all intervenors have entered into a stipulation with Applicant; therefore this application is processed pursuant to the Commission's Rule of Modified Procedure.

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

Applicant is a privately held limited liability company organized under the laws of the state of Illinois and is authorized to transact business in the state of Nebraska. The Applicant is authorized to provide telecommunications services in the states of Kentucky, Illinois and Wisconsin with applications currently pending in the states of Kansas, Louisiana, Missouri, Indiana, Ohio, Texas, Nebraska, Colorado and West Virginia. Neither Applicant nor its domestic member shareholders have been the subject of any formal complaints or other investigatory proceedings.

Applicant seeks authority to offer switched and dedicated access telecommunications services suitable for voice and

limited data applications in the state of Nebraska. Applicant does not intend to collect advance payments or deposits.

Applicant proposes to offer residential and business end users the opportunity to originate and terminate local and long distance telephone calls to other end users through access to the local exchange network. The local exchange services that Applicant proposes to provide will also enable end users to select the long distance carrier of their choice. Applicant proposes to offer local exchange services by installing and collocating its switching and ancillary equipment in the central offices of incumbent local exchange carriers. Applicant may also purchase unbundled network elements and may resell the services of other certified carriers. Applicant proposes to offer a variety of services, including but not limited to, residential basic line service, PBX trunks, DID service and PRI service.

Applicant intends to offer long distance services, both intra and inter-LATA, to businesses and residential customers through the use of its own switching facilities and the resale of services of other certified carriers. Applicant handles all of its billing in-house. Customer service is available 24 hours through a toll-free 800 number. Additionally, Applicant agrees to adhere to all state laws and all Commission policies, rules and orders.

As a result of the stipulation entered into by Applicant and the Intervenor, Applicant has voluntarily restricted its application. Accordingly, at this time, Applicant does not seek to provide service to customers in small or rural territories pursuant to Section 251(f)(1) of the Federal Act.

Applicant states it possesses the technical and managerial resources necessary to provide the proposed services in the state of Nebraska. In Exhibit E, attached to its application, Applicant provided details of its professional managerial experience and technical qualifications.

Applicant is a subsidiary of Heartland Communications Internet Services, Inc (Heartland). Exhibit F to the application is a copy of Heartland's three historical financial statements, four forecasted annual financial statements, and the Applicant's most recent interim financial statements certified by an independent certified public accountant.

Applicant states a grant of this application will serve the public interest of Nebraskans by ensuring competition in the local exchange, intraLATA toll and interLATA markets. Applicant



proposes to compete with the incumbent LECs, other competitive local carriers, and providers of long distance services by providing high quality, fairly-priced, innovative telecommunications services. Applicant states that entry into the market will make efficient use of existing communications resources and increase diversification and reliability in the supply of communications services. Further, its services will aid the expansion of the telecommunications industry in Nebraska and promote attendant employment opportunities for Nebraska citizens.

#### 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 services throughout Nebraska and local exchange services in the Qwest, Alltel, Citizens/Frontier and Sprint incumbent exchanges. No party in this proceeding refuted Applicant's competence.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply

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when considering applications to provide interexchange and local exchange services 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 interexchange and local exchange services 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 Application C-3453 be, and hereby is, granted.

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.

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 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.

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IT IS FURTHER ORDERED that within 30 days from the entry of this order that the Applicant file a tariff and pay appropriate filing fees 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 operate as a facilities-based local and interexchange carrier of telecommunications services within the State of Nebraska in the territory described herein.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of November, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Lorne Johnson*

*Anne C. Boyle*

*Frank E. Landis*

//s// Frank E. Landis  
//s// Gerald L. Vap

Chairman

*Gerald L. Vap*

ATTEST:

*Les Pollack*

Executive Director