

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-5180
Application of Fusion	)	
Communications, LLC, Atlanta,	)	
Georgia, seeking authority to	)	
provide competitive local	)	ORDER GRANTING APPLICATION
exchange and interexchange	)	
telecommunications services	)	
within the State of Nebraska.	)	Entered: March 29, 2022

BY THE COMMISSION:

On October 14, 2020, an application was filed by Fusion Communications, LLC, ("Fusion") of Atlanta, Georgia, seeking authority to operate as a local exchange and interexchange carrier of telecommunication services within the State of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 19, 2020. No protests were filed; therefore, this application is processed pursuant to the Commission's Rules of Modified Procedure.

Applicant is a Delaware limited liability company with its principal place of business located at 210 Interstate North Parkway, Suite 200, Atlanta, Georgia. Applicant has been authorized by the Secretary of State to operate in Nebraska. Applicant currently provides telecommunications services in Illinois, Maryland, and Michigan. No officer, director, or shareholder having 5% or more of Applicant's voting securities nor any of Applicant's business operations has been involved in a formal complaint or other investigatory or enforcement proceeding within the past two years.

Applicant requests authority to provide competitive local exchange services and interexchange telecommunications services, as well as various unregulated broadband services throughout the State of Nebraska. Applicant intends to offer these services as a common carrier. Applicant proposes to require certain advanced payments and/or deposits, as described in its proposed tariff.

Applicant states it possesses the requisite financial, technical, and managerial expertise to provide the proposed services. In support of its application, and during the pendency of this application, Applicant submitted various supporting information. Primarily, Applicant submitted detailed information regarding a bankruptcy proceeding filed by Applicant in the state

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of Texas. Following the bankruptcy proceeding, the Applicant submitted updated financial statements. Commission staff reviewed the additional filings and determined that the Applicant has demonstrated adequate financial capability to perform the proposed services.

Applicant states that the granting of this application is in the public interest because the Applicant's offerings will provide Nebraska customers with access to new technologies and service offerings, and will increase competition in the telecommunications market. Applicant states that its entry into the telecommunications market will enhance the telecommunications infrastructure in Nebraska and will facilitate economic development.

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

Applications for interexchange authority are subject to Commission jurisdiction under Neb. Rev. Stat. § 86-129 and 291 Neb. Admin. Code § 5-003.12. From examination of the application filed herein, the Commission finds the Applicant has provided all the information required by the Commission, possesses adequate financial resources to provide the proposed service, and possesses adequate technical competency to provide the proposed service. A grant of the application will serve the public interest. Accordingly, the portion of the application for interexchange authority should be granted.

The Commission considers the portion of this application requesting authority to provide local exchange services 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 the adequate managerial competence to provide the proposed service; and

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- (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 ("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 and interexchange services in the State of Nebraska.

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

1. 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
2. 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 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 service in any area in the State of Nebraska, Applicant must file tariffs in accordance with the provisions of 291 Neb. Admin. Code § 5-001.21.

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Upon the offering of local exchange and interexchange services in the State of Nebraska, Applicant shall 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 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-5180 be, and is hereby, granted.

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 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. Stats. §§ 86-301 - 86-315 and defined in 291 Neb. Admin. Code 5 §-001.01B, the Applicant shall collect from its subscribers a 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 for each authority it holds with the Commission in accordance with Commission regulations and requirements.

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.

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IT IS FURTHER ORDERED that this order be, and is hereby, 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.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 29th day of March, 2022.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Rod Johnson*  
*Crystal Brader*  
*Mary Kidden*  
*Tim Schram*

*Don W. Johnson*  
Chair

ATTEST:

*Thomas W. Golden*  
Executive Director