

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the application of ) Application No. C-1918  
JATO Communications Corp. seeking a )  
Certificate of Public Convenience )  
in the state of Nebraska for the ) GRANTED  
purpose of providing high-speed )  
data transmission and other )  
telecommunications services. ) Entered: February 17, 1999

APPEARANCES:

For the Applicant:  
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Lincoln, Nebraska 68508

For the Commission:  
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Lincoln, Nebraska 68508

For Arapahoe Telephone Com-  
pany; Benkelman Telephone  
Company, Inc.; Cozad  
Telephone Company; Diller  
Telephone Company; Hemingford  
Cooperative Telephone Company;  
Henderson Cooperative  
Telephone Company; and Wauneta  
Telephone Company:  
Timothy F. Clare  
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BY THE COMMISSION:

By its Application filed October 5, 1998, JATO Communications Corp. (the Applicant) seeks authority to obtain Certificates of Authority to provide telecommunications services as an inter-exchange (intraLATA and interLATA) carrier in the state of Nebraska and a competitive local exchange carrier in the territory presently served by US West Communications, Inc. (US West) and United Telephone Company of the West (Sprint). Notice of the application appeared in The Daily Record on October 9, 1998. The following parties filed Petitions of Formal Intervention: Arapahoe Telephone Company, Benkelman Telephone Company, Inc.; Cozad Telephone Company; Diller Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; Wauneta Telephone Company; The Nebraska Independent Telephone Association;

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Cambridge Telephone Co.; Clarks Telecommunications Co.; Consolidated Telco, Inc.; Consolidated Telephone Company; Great Plains Communications; HunTel Systems, Inc.; and Southeast Nebraska Telephone Co. (collectively referred to hereafter as "the Intervenor"). A hearing was held February 9, 1999, in the Commission Hearing Room, Lincoln, Nebraska, on the Applicant's request for authority to provide local exchange service, with appearances as shown above.

In support of its Application, the Applicant produced one witness, Patrick M. Green, Vice President Carrier Relations, who testified as follows:

Mr. Green testified that JATO was formed in 1998 to offer high-speed data telecommunications using Digital Subscriber Line (DSL) technology. JATO will be a facilities-based competitive local exchange carrier that focuses on data communications but possesses voice capabilities. JATO will enable Internet Service Providers to offer high-speed Internet access to their customers, both business and residential, and will enhance remote access from homes to Local Area Networks (LANs) of large corporations.

Mr. Green further testified that the Applicant has the financial capability and resources to deploy its proposed Nebraska network and to provide local exchange and interexchange services within the requested service areas, as demonstrated by the financial statements provided to the Commission with the Application and at the hearing. The Applicant will fund its local exchange operations in Nebraska with a combination of its own capital reserves, equipment financing and equity financing. The Applicant's personnel have experience in financing companies at all stages of development. Moreover, the Applicant's initial focus on data transmissions is not as capital intensive.

Mr. Green also presented testimony showing the Applicant's managerial competence. Applicant's management has over eighty years worth of combined experience in the telecommunications industry, including local loop, cable, satellite, wireless and wire-line communications services.

Mr. Green testified that the Applicant possesses the technical competence and resources to provide the services proposed in the

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Application. For instance, Rex Humston, the Applicant's Chief Technology Officer has over 15 years of experience in developing and managing telecommunications systems, both wireless and wireline. Moreover, the Applicant has an Equipment Installation and Maintenance Agreement with Lucent Technologies as an extension of its technical expertise.

Mr. Green further testified that granting the Applicant's application would serve the public interest by bringing consumers advanced technologies and quicker access to the Internet.

No other parties introduced testimony or evidence at the hearing.

The Applicant and the Intervenor have filed a Stipulation agreeing to certain language to be incorporated into this order. Additionally, in the Stipulation, the Intervenor state that they "will not oppose this Application," though they reserve certain rights to contest future applications of the Applicant.

#### 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

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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 Act.

The Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide interLATA interexchange service in Nebraska and local exchange service in the territories presently served by US West and Sprint.

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:

Through negotiation, arbitration or pursuant to Section 252(i) of the Telecommunications Act of 1996 (the Act), reach an interconnection/resale agreement with the pertinent incumbent local exchange carrier and receive Commission approval of the interconnection/resale agreement; and

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 protection created by the Federal Telecommunications Act for rural carriers, as defined by the Federal Act. This order does not address the issue of the rural local exchange carriers' exemption under this Federal Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Federal Act.

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Prior to providing local exchange service in any area in the state of Nebraska, Applicant must file, and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of the Neb. Admin. R. & Regs. tit. 291, ch.5.

As a provider of local exchange service in the state of Nebraska, Applicant will remain 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 Federal Telecommunications Act.

## O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-1918 be, and it is hereby, granted.

IT IS FURTHER ORDERED that upon final approval of the interconnection/resale agreements, Applicant is granted authority to provide local exchange service to the area presently served by US West and Sprint.

IT IS FURTHER ORDERED that, before Applicant is allowed to provide local exchange service to areas currently served by rural local exchange carriers, as defined by the Act, all of the requirements set forth in the Act must be evaluated.

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 other local exchange carriers except obligations imposed on ILECs pursuant to Section 251(c) of the Act.

IT IS FURTHER ORDERED that, to the extent the Applicant provides access line service as referenced in the Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-1302 - 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. tit. 291, ch. 5, § 001.01B, the Applicant shall collect from its subscribers a surcharge (Relay

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Surcharge) pursuant to the Relay Act and the Commission's annual orders establishing the amount of the Relay Surcharge, and shall remit to the Commission the proceeds from the Relay Surcharge, as provided by the Relay Act.

IT IS FINALLY ORDERED that this order be and is hereby, made the Commission's official Certificate of Authority to the Applicant to provide interexchange service throughout the state and provide local exchange service in the territories presently served by US West Communications, Inc. and United Telephone Company of the West dba Sprint.

MADE AND ENTERED at Lincoln, Nebraska, this 17th day of February, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

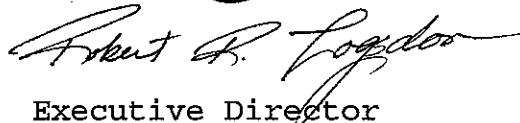
COMMISSIONERS CONCURRING:



//s//Lowell C. Johnson  
//s//Frank E. Landis  
//s//Daniel G. Urwiller



ATTEST:

  
Executive Director