

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2069
of Rhythms Links Inc., Englewood,)
Colorado, seeking authority for a)
Certificate of Public Convenience)
and Necessity to provide local) GRANTED
exchange and interexchange telecom-)
munications services in the state)
of Nebraska.) Entered: September 8, 1999

APPEARANCES:

For the Applicant:

Andrew S. Pollock
Brooks, Pansing Brooks, P.C.
1248 "O" Street, Suite 984
Lincoln, Nebraska 68508-1424

For the Commission:

Chris Post
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1200 "N" Street
Lincoln, Nebraska 68508

For the Nebraska Telephone Association:

Jack L. Shultz
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800 Lincoln Square
121 South 13th Street
Lincoln, Nebraska 68501-2028

BY THE COMMISSION:

By its application filed June 18, 1999, and its supplement and amendment to the application, filed July 19, 1999 (collectively referred to herein as the Application), Rhythms Links Inc. (Rhythms or the Applicant) seeks authority to provide telecommunications services as a competitive local exchange carrier and intrastate interexchange carrier in the state of Nebraska. Notice of the Application appeared in The Daily Record on July 23, 1999. The Nebraska Telephone Association (the Intervenor) filed a Petition for Formal Intervention. A hearing on the application was held August 26, 1999, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, Jo Gentry, Operational Director for Rhythms, who testified as follows:

Ms. Gentry has worked in the telecommunications industry for 20 years, beginning with US West in 1980, where she held various management positions. Her most recent position at US West was Product Development for Interconnection Unbundled Network Elements. In that position she had specific responsibility for developing unbundled loops, unbundled switching and combinations. In a previous US West position, Ms. Gentry worked as a supervising manager in the Carrier Access Product Management group where she co-developed the initial US West collocation process.

Ms. Gentry testified that Rhythms, founded two years ago, is primarily a provider of high-speed, broadband data services that are deployed utilizing DSL technologies. Rhythms is presently certified in 28 states and the District of Columbia and is providing service in more than half of those states. Rhythms has ordered ten collocations in Omaha, which are currently in the build stage.

Rhythms Links will offer facilities-based and resold high-speed data service and in the future anticipates providing voice services to its customers. These data services will be provided on a full-time basis, twenty-four hours per day, seven days per week. In providing such services, Rhythms Links will comply with all Commission requirements applicable to local exchange carriers, as well as any other applicable state or federal regulations, statutes, and orders.

Rhythms Links intends to provide services that meet the growing needs of consumers, both business and residential, for high-speed data services. Rhythms Links will provide services to support corporate offices and telecommuting by employees of Rhythms Links' business customers. Rhythms Links anticipates eventually offering high-speed data services to residential customers. The Company plans an aggressive network roll-out that relies on a combination of resale and facilities-based services to meet the pent-up demand for high-speed data services and serve telecommuters' needs. Rhythms Links intends to be a market leader in providing high quality innovative services that meet customer needs with a focus on ease-of-use and customer service.

Rhythms intends to provide local exchange service and exchange access in Nebraska by purchasing unbundled network elements, including loops, and collocating equipment in central offices. Rhythms also plans to construct its own facilities to provide facilities-based data services, some of which will be collocated in central offices and some of which will be placed in Rhythms' own metro service centers. In addition, Rhythms will lease additional facilities to connect the facilities in its metro service centers with the unbundled loops that it will purchase from incumbent local exchange carriers. In implementing its DSL network, Rhythms will employ state-of-the-art equipment from leading suppliers, such as Cisco and Paradyne.

Ms. Gentry testified that Rhythms presently intends to eventually provide service throughout the State of Nebraska. Rhythms, however, intends to initially serve the service areas and local calling areas presently served by advanced services arms of US West and GTE Midwest Incorporated (GTE). Initially, Rhythms Links will deploy its xDSL technology in the residential areas surrounding major population centers. Further, Ms. Gentry emphasized that Rhythms' application is not, and should not be construed as, a bona fide request for interconnection with any carrier.

Ms. Gentry also presented testimony showing that Rhythms has sufficient financial resources to implement and provision its local exchange telecommunications services in Nebraska. Though it is just a startup company, Rhythms has already gone public. It has been very successful in doing so. Additionally, Rhythms has substantial investments from such companies as MCI WorldCom and Microsoft, as well as smaller investments by companies such as Qwest. In total, Rhythms has received more than \$100 million in venture capital. The 1998 financial statements of the Applicant's parent corporation, Rhythms NetConnections, Inc., were filed with the Application as Exhibit C. The Applicant's most recent interim financial statements were filed with the Application as Exhibit D. These financial reports demonstrate that Rhythms is financially qualified to provide the proposed telecommunications services in Nebraska.

Ms. Gentry testified that Rhythms has sufficient managerial resources and technical abilities to provide local exchange telecommunications services in Nebraska. Rhythms is guided by an experienced and highly able management team that includes individuals who have distinguished themselves over the past two decades in executive positions at highly regarded telecommunication industry leaders such as US West and Sprint. The senior management team possesses extensive business, technical, operational, and regulatory telecommunications experience, and has been instrumental in the design, implementation, and operation of several major telecommunications networks. The extensive telecommunications and managerial experience of Rhythms' senior management is described in detail in Exhibit B filed with the application. Every level of Rhythms' management team is comprised of individuals who have significant communications experience and who are dedicated to providing the highest quality service in meeting customer needs.

Ms. Gentry further testified that a grant of Rhythms' application will promote the public interest by offering Nebraskans technologically advanced telecommunications services. Rhythms' service offerings will be unique, innovative and designed to address specific customer needs. The presence of Rhythms offering such products and services in Nebraska will provide additional customer choice, promote competition, and stimulate the development of additional telecommunications services. In addition, Rhythms expects to invest significantly in the development of a Nebraska infrastructure and provide telecommunications opportunities for the residents of Nebraska.

In response to questions from Commissioner Rod Johnson concerning how Rhythms will market its services, Ms. Gentry testified that Rhythms will utilize its own sales force and will also partner with various companies that provide customers to Rhythms Links through their associations and sales contacts. As set forth in Ms. Gentry's prefiled testimony, Rhythms provides an ongoing training program for its sales force on matters such as company philosophy, the products and services Rhythms is able to offer to its customers, and the regulatory requirements to which Rhythms is subject. Moreover, Rhythms is aware of the problems that slamming has caused long distance customers and is familiar with the FCC's rules and Nebraska's LB 150, which were adopted in an effort to control the problems caused by slamming. Rhythms has procedures in place to avoid slamming.

In response to questions from Commissioner Lowell Johnson, Ms. Gentry testified that Rhythms will have employees residing in Nebraska, who will primarily be involved in the engineering and technical side of Rhythms business. Additionally, Rhythms is now analyzing placement of a sales force in Nebraska. Rhythms plans to deploy service in the Omaha area during the first couple weeks of February 2000.

No other parties introduced testimony or evidence at the hearing.

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 local exchange service throughout the state of Nebraska. No evidence was submitted or testimony elicited to suggest that the applicant is not qualified to provide its proposed services in light of the criteria this Commission must consider.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2069 should be granted on a statewide basis.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2069 be and is hereby granted.

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 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 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 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 FURTHER ORDERED that the applicant comply with all necessary statutes and Commission orders, rules and regulations as they pertain to the Nebraska Universal Service Fund.

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 provide local exchange service and intrastate interexchange service within Nebraska.

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MADE AND ENTERED at Lincoln, Nebraska, this 8th day of September, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell C. Johnson

Lowell C. Johnson
Chairman

Anne C. Boyer

ATTEST:

Robert S. Logsdon
Executive Director

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