

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2160
of Fast Phones of Nebraska Corp.,)
Lincoln, Nebraska, seeking)
authority to provide local exchange) CERTIFICATE DENIED
telecommunications services as a)
Competitive Local Exchange carrier)
within the state of Nebraska.) Entered: April 11, 2000

APPEARANCES:

For the Applicant:
Steven Seglin
Attorney at Law
134 S. 13th Street
Lincoln, Nebraska

For the Intervenors:
Timothy F. Clare
Rembolt Ludtke & Berger
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Lincoln, Nebraska 68508

For the Commission:
Chris A. Post
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Lincoln, Nebraska 68508

Eric Anderson
Attorney-at-Law
14301 FNB Parkway
Omaha, Nebraska

BY THE COMMISSION:

By its application filed November 19, 1999, Fast Phones of Nebraska Corp. (Applicant) seeks authority to operate as a competitive local exchange carrier of telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on November 24, 1999. The following parties filed Petitions of Formal Intervention: Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; Wauneta Telephone Company and Houlton Enterprises, Inc. d/b/a EZ Phone Connections (collectively referred to hereafter as the Intervenors). A hearing on the application was held February 1, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, Bonnie Fox, President of the applicant, who testified as follows:

Ms. Fox testified that the applicant is a privately-held corporation organized and existing under the laws of Nebraska. It is a wholly-owned subsidiary of Fast Bucks Franchising, Inc., and will rely on said parent company for all financial support.

The applicant intends to provide service to business and residential customers in Nebraska through the resale of services provided by underlying facilities-based local exchange carriers that are located in Nebraska. As such, it is seeking a certificate to provide flat rate prepaid resold local exchange telecommunications services in the exchanges currently served by US West, ALLTEL, and GTE in the state of Nebraska.

The applicant proposes to offer a limited range of services, including unlimited local calling, access to 911, toll-free services, call waiting, caller ID, call forwarding three-way calling, speed dial and call return. However, as the service is prepaid, service blocks will be placed on toll, directory assistance, directory assistance call completion, operator assisted, inbound collect and third number billed calls. Customers would have access to customer service through a toll-free 800 number.

Ms. Fox also presented testimony on Fast Phones technical qualifications to provide the services it proposes to offer within the state of Nebraska. She indicated that to the extent that Fast Phones is able to ensure the provision of quality service, it has contracted with Americom Communications Corporation located in Lincoln, Nebraska, to assist with ordering, billing and service. The applicant has also made arrangements with Businessphone Systems of Lincoln, Nebraska, to assist with the resolution of problems on end users' premises. In addition, Ms. Fox indicated that she would seek instruction and training from US West and ALLTEL in ordering, billing and service.

According to Ms. Fox, Fast Phones is financially qualified to provide telecommunications services in Nebraska. To demonstrate its financial fitness, the applicant provided financial statements for the eleven months ending April 1999, from its parent corporation. Fast Bucks Franchising's 1999 financial statements, in her opinion, clearly demonstrate that there is ample capital to compete effectively in the market for flat-rate prepaid resold competitive local exchange telecommunications services in Nebraska.

Ms. Fox believes that granting the applicant a certificate to offer competitive local service will benefit Nebraska consumers. The prepaid local service industry provides the only means of telephone service for many residential and business customers that cannot obtain service from traditional carriers. By providing service to this unserved segment of society, prepaid local carriers serve the public interest by fulfilling the universal service goals of the Telecommunications Act of 1996 and state law. Finally, prepaid local carriers bring choice to residential and business consumers who may have been overlooked by other competitive local carriers.

Mr. Tim Clare, attorney for Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; Wauneta Telephone Company had no questions of Ms. Fox and did not present any additional evidence.

Mr. Eric Anderson, attorney for Houlton Enterprises, Inc. d/b/a EZ Phone Connections raised several issues on cross-examination on behalf of his client. Mr. Anderson inquired as to the financial qualifications of the applicant. Ms. Fox responded that through its parent company she believed that Fast Phones had the necessary stability to conduct business and that there doesn't take a large amount of capital for them to start providing service as they already have an office, a desk and a telephone. Furthermore, they have contacted Professional Billing Services to do the billing on their behalf.

Mr. Anderson inquired as to who would be handling customer complaints. Ms. Fox responded that customers would call the applicant, who would then research the problem. If necessary the applicant would contact the underlying provider or Professional Billing Services.

Mr. Anderson also questioned Ms. Fox about her knowledge of the different federal and state taxes and surcharges. While acknowledging their existence, Ms. Fox admitted that she was not "real versed" on that right now. Furthermore, in regards to the Nebraska Universal Service Fund and the Telecommunications Relay Service Fund, she indicated that she was not familiar with them.

Mr. Anderson continued his line of questioning by inquiring into how such taxes and surcharges would be collected and remitted by the applicant to the appropriate authorities. Ms. Fox indicated that it would be something that "we [the applicant] will just work out with the phone company." When asked about the applicant's understanding of any periodic filing requirements with the Public Service Commission, Ms. Fox indicated that she hadn't gone over that yet and that she would not know until she met with the phone company.

Mr. Anderson concluded his questioning of Ms. Fox by expressing his concern with the applicant's lack of knowledge as to the various requirements for operation of a competitive local exchange company. He indicated that his client's concern is that the requisite qualifications should be established before certification is sought. Ms. Fox responded that "we don't profess to know a lot about telephone lines and telephone business, but we do intend to be excellent customer service providers."

Chris Post, Legal Counsel for the Commission, noted the applicant's reliance to a great extent on the technical and managerial expertise of specific vendors. As little documentation had been provided regarding any of those vendors or their capabilities and expertise in their designated areas of service, Mr. Post requested that the applicant file late-filed exhibits containing such documentation.

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.

Upon review of the testimony and the exhibits filed herein, the Commission is of the opinion and finds that the application should be denied. While the applicant may have the necessary financial competence to provide resold services, it failed to demonstrate that it meets, at this time, the standards for technical and managerial competence to provide local exchange service in the state of Nebraska.

Specifically, the Commission finds that the applicant failed to demonstrate the necessary requirements outlined in Title 291, Chapter 5, § 002.49B1, 002.49B3 and 002.49B4 of this Commission's Telecommunications Rules and Regulations. However, the applicant is encouraged to reapply at such time that it can adequately

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demonstrate to this Commission that, at the time of application, it possesses all the requisite qualifications to provide such services to Nebraska consumers.

Insufficient evidence was submitted that adequately demonstrates that the applicant is qualified to provide its proposed services in light of the criteria set forth above. The Commission is particularly concerned about the applicant's continued reference to the "phone company" as to whom they would look to for answers. While the facilities-based underlying provider may be of some assistance, they are still the competition and may not be overly anxious to aid a competitor. The applicant must recognize that while they are proposing to offer only resold services, such a certificate of authorization would make the applicant become "the phone company."

For the above reasons, the Commission is of the opinion and finds that Application No. C-2160 should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2160 be, and is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 11th day of April, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

[Signature]
[Signature]
[Signature]

[Signature]
 Chairman

ATTEST:

[Signature]
 Executive Director

COMMISSIONERS DISSENTING:
 //s//Daniel G. Urwiller

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