

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Application) Application No. C-2171
of MVX.COM Communications, Inc.)
of Novato, California, seeking)
authority to obtain a Certificate) GRANTED
of Public Convenience and Necessity)
to provide local exchange tele-)
communications services within)
the state of Nebraska.) Entered: July 18, 2000

For the Applicant:
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Elkhorn, Nebraska 68022

For Arapahoe Telephone Com-
pany; Benkelman Telephone Com-
pany; Cozad Telephone Company;
Hemingford Cooperative Tele-
phone Company; Henderson
Cooperative Telephone Company;
and Wauneta Telephone Company:
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For the Commission:
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BY THE COMMISSION:

By its application filed December 2, 1999, MVX.COM Communications, Inc. (MVX.COM) of Novato, California, seeks authority to obtain a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on December 3, 1999. The following parties filed Petitions of formal intervention: Arapahoe Telephone Company, Benkelman Telephone Company, Cozad Telephone Company, Hemingford Cooperative Telephone Company and Wauneta Telephone Company. A hearing was held on July 11, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

E V I D E N C E

In support of its application, the applicant produced one witness, Dick Vanaggelen, manager of regulatory affairs, who testified as follows:

Mr. Vanaggelen testified that MVX.COM is a privately-held California company with its principal place of business in Novato, California. The applicant is proposing to provide basic plain old telephone (POT) service, high capacity services and some Internet services. MVX.COM is certified to provide local exchange service in approximately 25 states. The applicant has never been denied a certificate to provide local exchange services in any state. The applicant also seeks interexchange carrier authority from this

Commission. That application was filed and docketed at C-2279.

Mr. Vanaggelen indicated that the applicant will be concentrating mainly on smaller- and medium-sized businesses. He testified that the applicant will market its services through direct mail, telemarketing and through word-of-mouth. New subscribers will not be required to make deposits and the company bills its own subscribers. Customers will have a toll-free number available for inquiries and complaints. The applicant currently has approximately 900 customers nationwide. He testified that the company intends to provide operator services, 911 and E-911 services.

Mr. Vanaggelen testified that the applicant possesses sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. The senior management team of the applicant has extensive telecommunications experience and expertise. He testified that its management team included technical experts and regulatory personnel providing the applicant with the adequate skill level needed to provide the proposed telecommunications services. Mr. Vanaggelen also produced a supplemental document which provided evidence of the applicant's managerial and technical expertise. This document was received into evidence and marked as Commission Exhibit No. 5. The applicant is planning to change its name to QuantumShift. If the application is granted, Mr. Vanaggelen testified, applicant would immediately file for approval of the name change.

Mr. Vanaggelen presented testimony showing that applicant has sufficient financial resources to implement and provision local exchange services in the geographic area of the proposed service territory, as demonstrated by the confidential and proprietary financial statements provided to the Commission. He also testified that funding in the amount of \$54 million dollars had been promised by Venture Capitalists which will help the applicant to continue in its growth plan. He testified that this funding commitment was ratification that the applicant was a financially successful company.

Mr. Vanaggelen further testified that the granting of the application will be in the public interest because the MVX.COM will provide consumers with a competitive rate and a choice in local providers.

Mr. Vanaggelen confirmed that this application is not a bona fide request for interconnection with areas currently protected by the rural exemption defined in the federal Telecommunications Act of 1996. He further testified that applicant has entered into a stipulation with the formal intervenors limiting its service territory to the areas served by US West Communications, Inc., ALLTEL, Citizens and Sprint.

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 Telecommunications Act of 1996 (Act).

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange services in the state of Nebraska in the territory presently served by US West, ALLTEL, Citizens and Sprint. No party in this proceeding refuted the applicant's competence.

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 territory. All telecommunications carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set forth herein.

Before applicant is allowed to provide local exchange service to its users, it must either:

(1) Through negotiation or 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; or

(2) In the event a certified local exchange carrier provides a wholesale statement of generally available terms and conditions (SGAT) or similar offering, purchase rates from that SGAT or similar offering.

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 carriers' 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, 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 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 Commission that Application No. C-2171 be, and is hereby, granted.

IT IS FURTHER ORDERED that the applicant comply with Section 251(f)(1)(B) of the Act 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 Systems Act, Neb. Rev. Stat. §§ 86-1302 to 86-1306 (Relay Act) and defined in Neb. Admin. R. & Regs., 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 shall 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 this 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.

IT IS FURTHER ORDERED that within 30 days from the entry of this Order that applicant file a tariff 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 provide local exchange telecommunications services in the Nebraska territory described herein.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of July, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director

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