

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. C-2181  
Network Access Solutions Corpora- )  
tion, Sterling, Virginia, seeking )  
Certificates of Public Convenience ) GRANTED  
and Necessity to provide local )  
exchange and emerging competitive )  
telecommunications service. ) Entered: May 2, 2000

APPEARANCES:

	For the Applicant:	For Arapahoe
Telephone Company;		
	Andrew S. Pollock	
Benkelman Telephone Company,		
	Brooks, Pansing Brooks, P.C.	Inc.;
Cozad Telephone		
	1248 O Street, Suite 984	
Company; Hemingford Cooperative		
Lincoln, Nebraska 68508-1424	Telephone Company; Henderson	
	Cooperative Telephone	
	Company; and Wauneta Telephone	
	Company:	
For the Commission: Mark A. Fahleson		
Shanicee Knutson	Rembolt, Ludtke & Berger	
	300 The Atrium	1201 Lincoln
Mall, Suite 102		
	1200 N Street	Lincoln,
Nebraska 68508		
Lincoln, Nebraska 68508		

BY THE COMMISSION:

By its application filed December 14, 1999, Network Access Solutions Corporation (Applicant) seeks authority to provide local exchange and interexchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on December 16, 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; and Wauneta Telephone Company (collectively referred to hereafter as the Intervenor). A hearing on the application was held April 11, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, Don Sussman, director of regulatory affairs for the applicant, who testified as follows:

Mr. Sussman testified that the applicant is a publicly-held Delaware corporation headquartered in Sterling, Virginia. The applicant has immediate plans to move its headquarters to Herndon, Virginia. The applicant has obtained authority from the Nebraska Secretary of State to transact business in the state of Nebraska.

The applicant is authorized to provide telecommunications service in Alabama, Delaware, Florida, Kentucky, Massachusetts, New Jersey, New York, Pennsylvania, South Carolina and the District of Columbia and currently is providing service to customers in Boston, New York, Newark, Trenton, Wilmington (Delaware), Philadelphia, Pittsburgh, Baltimore, Washington, D.C., Richmond and Norfolk.

The applicant seeks authority to provide interexchange telecommunications statewide and local exchange telecommunications services in the territories currently served by Aliant Communications Co., d/b/a ALLTEL (ALLTEL) and US West Communications, Inc. (US West). Mr. Sussman testified that the applicant hopes to expand its network into the Omaha area later this year.

Mr. Sussman testified that the applicant began business in January 1995 as a supplier of network integration services to customers with private transmission networks. Early last year, NAS dramatically expanded its business by initiating the provision of specialized telecommunications service to small and mid-sized businesses in the Bell Atlantic region. The applicant is focused on providing customers with high-speed data transmission service using digital subscriber line (DSL) technology and, in particular, symmetric DSL (SDSL). CuNet, as the applicant calls its service, permits customers to upload and download information and data from the Internet and corporate networks at high speeds. CuNet is especially beneficial for telecommuters.

The applicant provides CuNet services as a facilities-based carrier. It does so by obtaining unbundled network elements (loops and transport) as well as collocation and operational support systems (OSS) from incumbent local exchange carriers. It uses the collocation arrangements in order to access its unbundled network elements and to combine those elements with its own electronic equipment.

Mr. Sussman testified that the applicant has sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. Each of the applicant's senior executives has many years of experience in the telecommunications industry, collectively totaling over 200 years. In addition, one of applicant's board members was chairman of the Federal Communications Commission in the late 1980s. The applicant also demonstrated it is technically qualified because of the engineering expertise on its staff. Applicant has more than 50 telecommunications engineers employed full time.

Mr. Sussman also presented testimony showing that the applicant has sufficient financial resources to implement and provision its local exchange telecommunications services in its proposed service territory, as demonstrated in financial statements filed with the application and in subsequent filings. Mr. Sussman testified that in June 1999 the applicant (Nasdaq: NASC) completed

an initial public offering of 7.5 million shares of its common stock, raising nearly \$85 million. The applicant raised another \$150 million by selling 750,000 shares of convertible preferred stock to SBC Corp. and another 750,000 shares of convertible preferred stock to Telefonos de Mexico. Proceeds from all of these public and private securities offerings are being used to finance development of the applicant's new telecommunications service operations, including expansion into other states such as Nebraska. The applicant also has a line of credit at its disposal.

Mr. Sussman further testified that a grant of the applicant's application will promote the public interest by providing consumers with another choice in provider for advanced telecommunications services.

On cross-examination, Mr. Sussman confirmed that the applicant is committed to the statement it made in the stipulation filed herein, limiting its request for local exchange authority to the territories presently served by ALLTEL and US West. Mr. Sussman acknowledged that expansion of the applicant's service territory will require further application to the Commission. The applicant has entered into an interconnection agreement with US West, which is awaiting execution by US West before filing with the Commission. The applicant has not yet commenced negotiations for interconnection with ALLTEL.

Upon questioning by the Commissioners and staff, Mr. Sussman testified that the applicant will handle customer complaints directly. Since the applicant utilizes a direct sales force, the customer will have its own customer representative. Mr. Sussman testified that the applicant has had no certificates revoked and has not been the subject of any formal complaints in any jurisdiction. Mr. Sussman also testified that the applicant primarily markets to and serves small to mid-sized businesses.

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 territories presently served by ALLTEL and US West and interexchange services statewide. 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 territories. 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:

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

(b) 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 this 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 Sections 002.21 and 003.08 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-2181 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 - 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 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 territories presently served by ALLTEL and US West, and to provide interexchange telecommunications services within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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