

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of NorthPoint        )     Application No. C-2183  
Communications, Inc. of San        )  
Francisco, California,            )  
seeking authority to obtain        )  
a Certificate of Convenience        )     GRANTED  
and Necessity to provide           )  
local exchange and interex-        )  
change telecommunications           )  
services in the state of            )  
Nebraska.                            )     Entered: May 16, 2000

APPEARANCES:

For the Applicant:

Loel P. Brooks  
Brooks, Pansing Brooks, P.C.  
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For the Commission:

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For the Intervenor:

Mark A. Fahleson  
Rembolt, Ludtke & Berger  
1201 Lincoln Mall, Suite 102  
Lincoln, NE 68508

BY THE COMMISSION:

By its application filed December 15, 1999 (the Application), NorthPoint Communications, Inc. (NorthPoint 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 December 17, 1999. Petitions for formal intervention were filed by Arapahoe Telephone Company, Benkelman Telephone Company, Inc., Cozad Telephone Company, Hemmingford Cooperative Telephone Company, Henderson Cooperative Telephone Company, and Wauneta Telephone Company (collectively referred to as the Intervenor). A hearing on the application was held April 11, 2000, at 2:30 p.m. in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant presented evidence that NorthPoint is a corporation organized under the laws of

the state of Delaware and is a wholly-owned subsidiary of NorthPoint Communications Group, Inc. NorthPoint has obtained authority from the Nebraska Secretary of State to transact business in the state of Nebraska.

The Applicant produced one witness, Christine Mailloux, Assistant General Counsel-Regulatory, who testified as follows:

Ms. Mailloux testified that NorthPoint is presently certificated to provide telecommunications services in thirty-two (32) states and the District of Columbia, with applications pending in six states. Ms. Mailloux testified that NorthPoint is a facilities-based carrier which seeks to provide a full range of local exchange and interexchange telecommunications services and exchange access telecommunications services within the state. NorthPoint's services will be provided by a combination of facilities owned or leased by NorthPoint. Initially, NorthPoint intends to focus on deploying xDSL technology to provide high-speed connections to small and medium-sized businesses. NorthPoint will offer these services over dedicated lines. Ms. Mailloux testified that in providing such services, NorthPoint will comply with all Commission requirements applicable to local exchange carriers as well as any other applicable state or federal regulations, statutes and orders.

Ms. Mailloux testified that NorthPoint plans to use US West unbundled network elements, loops, unbundled transport and US West collocation services to provide its own facilities-based services. NorthPoint will also use its own equipment which it will collocate in US West's central offices and node sites. NorthPoint also proposes to offer several varieties of DSL, including iDSL and sDSL. sDSL is better for users who want equal speed upstream and downstream and for end-users who are served by longer loops.

Ms. Mailloux also testified that NorthPoint plans to serve the residential sector as soon as possible. NorthPoint has a marketing strategy for provisioning DSL services to residential customers through a partnership with Microsoft and Radio Shack stores across the country. The relationship with Radio Shack will permit customers to order DSL services and necessary equipment through an interactive kiosk installed at each Radio Shack store. In addition, Ms. Mailloux testified that NorthPoint has hired a special project manager who will be exclusively dedicated to "digital divide" projects aimed at bringing broadband access to low income and rural areas.

Ms. Mailloux also testified that NorthPoint has the managerial and technical resources and abilities to provide local exchange

telecommunications services in Nebraska. She testified that NorthPoint has an experienced management team which includes individuals who have distinguished themselves in executive positions at some of the top telecommunications companies in the country, including US West, MFS/WorldCom and Sprint. The management team is supported by nearly 1,200 telecommunications and data professionals employed by NorthPoint who are supporting and deploying the largest DSL network in the country. The telecommunications and managerial experience of the senior management team is described in detail in Exhibit C of the application. NorthPoint, therefore, possesses the managerial and technical experts to provide its proposed services in Nebraska.

Ms. Mailloux also testified that NorthPoint has sufficient financial resources to implement and sustain its proposed services in Nebraska. She testified that the applicant has a very strong financial portfolio that will sustain it through its current network expansion. NorthPoint has raised over \$1.2 billion in the past three years and has over \$400 million in the bank today as a result of multiple types of financing. The applicant's most recent financial statement was filed with the application and demonstrates that NorthPoint is financially qualified to provide the proposed telecommunications services in Nebraska.

Ms. Mailloux added that granting NorthPoint the authority to provide competitive local exchange services would be in the public interest. She testified that NorthPoint's entry into the Nebraska market would further open up Nebraska's DSL market to competition. NorthPoint believes it will provide a better, cheaper and more innovative product than other competitors and thus stimulate the development of additional broadband services in the state of Nebraska. Ms. Mailloux further testified that NorthPoint's business development and implementation plan will promote the public interest of Nebraska citizens looking for access to competitive advanced telecommunications services.

Ms. Mailloux stated that customer complaints would be handled through an 800 number and also through NorthPoint's ISP partners who actually provide direct services to end-users. All customer billing will be handled within NorthPoint rather than through a third party service. None of their complaints have risen to formal complaints and have largely dealt with delays in providing services due primarily to difficulty obtaining unbundled loops from the incumbent local exchange provider.

Upon cross-examination, Ms. Mailloux confirmed that the application does not constitute a bona fide request for interconnection with any of the intervenors even though the application requests statewide authority. Ms. Mailloux also indicated that NorthPoint's initial services would be offered in the Omaha area and that she did not have a current timetable for expansion into other Nebraska exchanges.

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;
- (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 within the area served by US West, GTE, ALLTEL, and Sprint. 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.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering the 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 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 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-2183 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 the 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 shall file, in accordance with the applicable statutes, on or before April 30th 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 these are not available, applicant shall submit a balance sheet and income statement for the previous year of operation, as well as the investment made in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues and 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 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 as described herein and intrastate interexchange service within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 16th day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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