

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2188
of BlueStar Networks, Inc. of)
Nashville, Tennessee, seeking)
authority to obtain a Certificate)
of Public Convenience and)
Necessity to provide local ex-)
change, exchange access and) GRANTED
interexchange telecommunications)
services within the state of)
Nebraska.) Entered: March 14, 2000

APPEARANCES:

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

By its application filed December 23, 1999, BlueStar Networks, Inc. of Nashville, Tennessee (Applicant or BlueStar) seeks authority to obtain a Certificate of Public Convenience and Necessity to provide local exchange, interexchange and exchange access telecommunications services on both a facilities-based and resale basis throughout the state of Nebraska. Notice of the application appeared in The Daily Record on December 28, 1999. The following parties filed Petitions of Formal Intervention: Arapahoe Telephone Company; Benkelman Telephone Company; Cozad Telephone Company; Wauneta Telephone Company; Hemingford Cooperative Telephone Company; and Henderson Cooperative Telephone Company (collectively, Intervenor). A hearing was held February 15, 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, applicant produced one witness, Michael B. Bressman, associate general counsel for BlueStar. Mr. Bressman testified as follows:

Applicant is a Tennessee corporation and has filed its application for a certificate of authority to do business in the state of Nebraska. Applicant has been granted competitive local exchange carrier (CLEC) authority in 22 states. While it is the intent of the applicant to provide services on a statewide basis throughout the state of Nebraska, BlueStar will initially provide services in Lincoln and Omaha. BlueStar's request for statewide authority does not constitute a bona fide request for interconnection. The geographic areas to be served by the applicant will be subject to the rural and 2 percent exemptions established in the Federal Telecommunications Act of 1996.

BlueStar intends to provide Internet-protocol-based telecommunications services using digital subscriber line (DSL) technology, which would allow for high-speed and other high-bandwidth data transfer applications. Initially, BlueStar will offer only high-speed telecommunications data services and not voice-grade telecommunications services. Services will be provided to customers through adding equipment such as DSL modems, digital subscriber line multiplexers or DSLAMS, and plain old telephone service (POTS) splitters, as well as through collocation of data equipment in the central offices of the incumbent local exchange carriers (ILECs).

Mr. Bressman further testified that BlueStar has assembled a very experienced management team. BlueStar's chief executive officer has been in the telecommunications industry for a number of years. The applicant's chief financial officer has more than 20 years experience in accounting and management. BlueStar's chief technical officer, as well as BlueStar's other senior officers, has an extensive range of long involvement in the telecommunications industry as demonstrated in Exhibit 5 to BlueStar's application.

Mr. Bressman further testified that the applicant has the financial capability to provide local exchange services throughout the geographic area of the proposed service territory, as demonstrated by the confidential and proprietary financial statements provided to the Commission as Exhibit 4 to BlueStar's application. BlueStar's parent company has recently filed to become a public corporation and applicant will have access to funds raised by this structure change. In addition, Mr. Bressman testified that BlueStar has raised adequate operating funds through private equity investments. Applicant estimates that operational costs will be approximately \$250,000 per city not including employee salaries.

As far as technical capability, Mr. Bressman testified, BlueStar will provide a proprietary network system and high-speed Internet through already existing telephone lines. DSL transforms

existing copper telephone lines into a medium capable of carrying Internet data and voice simultaneously rather than requiring separate lines for each. To do this, BlueStar needs agreements with incumbent local exchange carriers (ILECs). BlueStar has signed an agreement to do this with US West and has requested an agreement with ALLTEL. BlueStar is not offering a voice-grade service because it is not locating a voice switch at the central office and is not providing voice-grade equipment to the customer. Thus, BlueStar cannot offer directory assistance, or 911 service. If BlueStar decides to offer basic local exchange and other voice-grade services in the future, it will amend its tariffs and comply fully with all Commission rules related to providing these services such as directory assistance, telephone relay service, and 911 service.

BlueStar will contact subscribers directly, on a face-to-face basis, and will use no telemarketing tactics to contact potential subscribers. Applicant will have a toll-free number to answer customer complaints during regular business hours.

Mr. Bressman believes that BlueStar's presence in the state will serve the public interest by offering a number of technologically-advanced services to small and medium-sized businesses at a low competitive price. Mr. Bressman testified that this advanced telecommunications technology will attract more employers who demand cutting-edge technology. DSL also offers high-speed secure connections that will enable the consumer to operate on a more private network.

Mr. Bressman reiterated that the applicant does not seek removal of or exception to the 2 percent or rural exemption pursuant to the Federal Telecommunications Act. He further testified that this application does not represent a bona fide request for interconnection pursuant to the Federal Telecommunications Act.

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 applicant has provided the information required by the Commission;

(b) Whether applicant has provided a performance bond, if required;

(c) Whether applicant possesses adequate financial resources to provide the proposed service;

(d) Whether granting applicant a certificate preserves and advances universal service, protects the public safety and welfare, ensures the continued quality of telecom-

munications services and safeguard 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 service on a resale basis in Nebraska. No party to this proceeding refuted the applicant's competence. No performance bond is required.

Before the applicant is allowed to provide local exchange service to its users:

(a) The applicant, either through negotiation or arbitration, must reach an interconnection/resale agreement with US West, GTE, ALLTEL, or Sprint.

(b) The Commission must approve the interconnection agreement; and

(c) Applicant must file, and the Commission must approve, a tariff in accordance with the provisions of Section 002.21 of Neb. Admin. R. & Regs. Title 291, Chapter 5.

This order does not terminate, waive or in any manner diminish the exemptions and protection created by the Act for rural carriers. This order does not address the issue of the rural local exchange carrier's 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 shall file, and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of Neb. Admin. R. & Regs. Tit. 291, ch. 5.

Applicant has entered into a stipulation with the intervenors not to oppose the application; however, the intervenors maintain the right and opportunity to contest any future application of the applicant to expand its service territory. Nothing in the stipulation shall in any way limit applicant's right in connection with any such future application to demonstrate to the Commission, applicant's satisfaction of any such criteria or standards established by the Commission.

As a provider of local exchange service in the state of Nebraska, the applicant should 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 Nebraska Public Service Commission that Application No. C-2188 be, and it is hereby, granted.

IT IS FURTHER ORDERED that upon final approval of the inter-connection agreement and tariff, applicant is granted authority to provide local exchange service on a resale basis in the areas served by US West, GTE, ALLTEL, and Sprint. The applicant must make further application to this Commission for authority to provide local exchange service outside these areas.

IT IS FURTHER ORDERED that applicant shall abide by the same laws, rules and regulations, both federal and state (including any laws, rules or regulation 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 to 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 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 FINALLY ORDERED that this order be, and hereby is made, the Commission's official Certificate of Public Convenience and Necessity to applicant to provide local exchange service within the territory described herein in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of March, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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