

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-2216
Application of NewPath)
Holdings, Inc., Des Moines,)
Iowa, seeking a certificate)
of authority to provide lo-) GRANTED
cal exchange and interexchange)
telecommunications services)
within the state of Nebraska.) Entered: May 24, 2000

APPEARANCES:

For the Applicant:

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For the Commission:

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For the Intervenor:

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BY THE COMMISSION:

By its application filed February 8, 2000 (Application), NewPath Holdings, Inc. (NewPath or Applicant), Des Moines, Iowa, 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 February 9, 2000. Petitions for formal intervention were filed by Arapahoe Telephone Company, Benkelman Telephone Company, 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 27, 2000, at 1:30 p.m. in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

The applicant produced one witness, Mick Herke, executive vice president, who testified as follows:

Mr. Herke testified that NewPath is presently certificated to provide telecommunications services in seven states, with applications pending in eight other states at this time. Initially, NewPath intends to focus on deploying xDSL technology to provide high-speed, high-quality data connections to businesses and residential customers. NewPath intends to offer these services through its own electronic equipment collocated at ILEC central offices, unbundled network elements and/or other transport means leased or purchased from the ILEC and/or other certified carriers, and/or through resale of the services of the ILEC and/or other carriers. Mr. Herke testified that to the extent market conditions warrant, NewPath contemplates supplementing its data services with resold or facilities-based local exchange and interexchange voiceband services. Mr. Herke testified that in providing such services, NewPath will comply with all Commission requirements applicable to local exchange carriers as well as any other applicable state or federal regulations, statutes and orders.

Mr. Herke also testified that NewPath has the managerial and technical resources and abilities to provide local exchange and interexchange telecommunications services in Nebraska. He testified that NewPath has an experienced management team and consultants which combine for well over 100 years of telecommunications industry management and technical experience.

Mr. Herke further testified that NewPath has access to ample financial resources to implement and sustain its proposed services in Nebraska. The applicant's most recent financial statements were filed under seal as a supplement to the application and demonstrates that NewPath is financially qualified to provide the proposed telecommunications services in Nebraska.

Finally, Mr. Herke testified that granting NewPath the authority to provide competitive local exchange and intrastate interexchange services would be in the public interest. He testified that the services NewPath proposes to offer will provide Nebraska consumers with an enhanced range of telecommunications services and will increase customer choice and encourage carriers to provide more efficient service and lower prices. NewPath's proposed services will also provide customers with greater service reliability and create competitive pressures on other carriers to provide better, more responsive customer service.

At the request of Mr. Anderson, the Commission took judicial notice of orders already issued by the Commission to AT&T, MCI Metro, WorldCom, Tracy Corporation, DSLnet, Cable USA, Panhandle Network, New Edge Networks and Pathnet authorizing those carriers to offer local exchange services throughout the state of Nebraska.

Upon cross-examination, Mr. Herke 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.

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 (Act).

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange and interexchange services in the state of Nebraska. 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 or intrastate interexchange service in the state of Nebraska. All telecommunications carriers seeking such certificates 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 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 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-2216 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 and intrastate interexchange service within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 24th day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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