

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2218
of Choctaw Communications, Inc.)
d/b/a Smoke Signal Communications,)
Houston, Texas, seeking authority) GRANTED AS AMENDED
to operate as a resale carrier of)
intrastate interexchange and local)
exchange telecommunication services)
within the state of Nebraska.) Entered: June 20, 2000

APPEARANCES:

For the Applicant:
Seth L. Block, CPA, Sr. V.P.
Smoke Signal Communications
8700 South Gessner,
Houston, Texas 77074

For Arapahoe Telephone; Com-
pany; Benkelman Telephone
Company; Cozad Telephone Com-
pany; Hemingford Cooperative;
Henderson Cooperative
Telephone Company; and Wauneta
Telephone Company:
Mark A. Fahleson
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Lincoln, Nebraska 68508

For the Commission:
Michael T. Loeffler
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BY THE COMMISSION:

By its application filed February 9, 2000, Choctaw Communications, Inc., d/b/a Smoke Signal Communications, Houston, Texas, (Applicant or Choctaw) seeks authority to operate as a resale carrier of intrastate interexchange and local exchange services within the state of Nebraska. Notice of the application appeared in The Daily Record on February 10, 2000. The following parties filed Petitions of Formal Intervention: Arapahoe Telephone Company; Benkelman Telephone Company; Cozad Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company and Wauneta Telephone Company (collectively, Intervenor). A hearing was held May 24, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above. Notice of the hearing was mailed to the interested parties by the executive director of this Commission on April 13, 2000.

In support of its application, applicant produced one witness, Seth Block, senior vice-president of Choctaw, who testified as follows:

Applicant is a wholly-owned subsidiary of Vartec Telecom of Lancaster, Texas, having merged with Vartec in November 1998. Vartec is primarily a long distance provider. Choctaw originally started doing business in 1996, headquartered in Houston, Texas.

Choctaw is now licensed in more than 30 states and currently has business in 18 states. The company sells strictly on resale agreements.

Speaking on the company's managerial expertise, Mr. Block testified that Glenn Massey, Choctaw's president, has headed several companies. Managerial expertise is also provided by Vartec, the parent company.

Choctaw intends to market its services through television advertising with agents stationed throughout various locations in major cities in the state. Customer inquiries and complaints will be serviced through a toll-free 800 number which will be open from 7:00 a.m. until 11:00 p.m.

Upon questioning by counsel for the Intervenors, Mr. Block clarified that his company intends to offer service in the Sprint, GTE, US West and ALLTEL territories. Their application is not intended to request authority for any areas in the state covered by the rural exemption of the federal Telecommunications Act of 1996 nor does the application constitute a bona fide request for interconnection with any rural exchanges.

The applicant stated that it is his belief that Choctaw would benefit Nebraska consumers through increased choice and by offering telephone service to persons who might not be able to obtain telephone service in a conventional manner due to problems with credit.

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 Act.

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide both interexchange and local exchange service in the state of Nebraska.

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

(a) Through negotiation or arbitration, 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 tariff, purchase rates from that tariff, file its own tariff and receive Commission approval of its tariff.

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 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 must file and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of the Neb. Admin. R. & Regs. Title 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 ILECs 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-2218 be, and hereby is, 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 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 any 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 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. Title 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 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 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 the 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 the applicant file a tariff with the Commission as required by state statutes and the Commission's regulations.

IT IS FURTHER 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 service areas of GTE, Sprint, US West and ALLTEL.

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 interexchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of June, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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