

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-2230
of NOW Communications, Inc.,)	
Jackson, Mississippi, seeking)	
authority to obtain a Certificate)	GRANTED AS AMENDED
of Local Convenience and Necessity)	
to provide competitive local)	
exchange telecommunications)	
services in the state of Nebraska.)	Entered: June 29, 2000

BY THE COMMISSION:

By its application filed February 22, 2000, NOW Communications, Inc., Jackson, Mississippi, (NOW Communications or Applicant) seeks authority to obtain a Certificate of Public Convenience and Necessity to provide competitive local exchange services in the state of Nebraska. Notice of the application appeared in The Daily Record on February 25, 2000. Petitions of Formal Intervention were filed on March 20, 2000 by: The Arapahoe Telephone Company, Benkelman Telephone Company, Inc., Cozad Telephone Company, Hemingford Cooperative Telephone Company, Henderson Cooperative Telephone Company and Wauneta Telephone Company, through their attorney, Timothy F. Clare.

On April 13, 2000, the executive director of this Commission sent by first class mail a copy of the notice of hearing. A hearing was held on June 6, 2000, in the Commission Library, Lincoln, Nebraska, with appearances by Kristin Sornson for the applicant and Michael T. Loeffler for the Commission.

In support of its application, applicant produced one witness, R. Scott Seab, vice-president of Regulatory Affairs for NOW Communications. Mr. Seab testified that NOW Communications received corporate authority on February 29, 1996, in Mississippi. NOW Communications has received authority in 32 other states, as well as the District of Columbia. No formal complaints have been filed against the applicant in any of the states in which they are currently operating.

NOW Communications operates primarily in the Bell South region. NOW Communications provides switchless reseller of incumbent local exchange residential services. In addition, NOW Communications provides vertical services such as call-waiting and Caller ID.

NOW Communications intends to operate in the service areas of US West, ALLTEL and GTE. The applicant has negotiated an interconnection agreement with US West.

Mr. Seab testified that, in their original application, NOW Communications had requested a waiver of the Commission's Telecommunications Rules and Regulations, Rule 2.16(A)(4) which provides for separate disconnect notice. Mr. Seab noted that the applicant withdraws that request of waiver.

NOW Communications markets through television, radio and newspaper advertising. The applicant has arrangements with other payment centers such as Western Unions, grocery stores and convenience stores to take payments from customers. Subscribers could also make payments directly to NOW Communications headquarters in Jackson, Mississippi. Subscribers prepay for their services one month at a time.

Larry Seab is the CEO and president of NOW Communications. He has been a consultant to the industry since 1973 preparing rate cases for incumbent telephone companies nationwide. He later started his own long distance company and was then a vice-president for Bell Telecommunications, Inc. before starting NOW Communications. NOW Communications has filed audited financial statements with the Commission.

Mr. Seab further testified that the public interest would be served by the granting of this application by offering consumers increased choices, expanding the universe of customers eligible for telecommunications services and by serving a market that is generally credit impaired.

The applicant has signed a stipulation with the intervenors which clarifies the service area sought by NOW Communications. NOW Communications does not seek to provide service in areas defined as rural by the federal Telecommunications Act nor does this application represent a bona fide request for interconnection with a rural carrier.

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 applicant possesses adequate technical competence and resources to provide the proposed service;
- (e) Whether applicant possesses adequate managerial competence to provide the proposed service; and

- (f) Whether granting 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 resale local exchange telecommunication service as provided in the application filed with the Commission. The Commission finds that no performance bond should be required at this time.

The Commission further finds that the application should be granted as amended by the following provisions:

(1) The request by the applicant for waiver of Title 291, Chapter 5, Commission Rules and Regulations for Telecommunications, Rule 2.16(A)(4) is withdrawn.

(2) Pursuant to the stipulation entered as Exhibit No. 5, the requested service area of the applicant is confined to the service areas of US West, ALLTEL and GTE.

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

- (a) The applicant, either through negotiation or adoption, must reach an interconnection 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.

Further, prior to providing local exchange service to any area covered by the rural exemption, the Applicant must obtain additional authority from this Commission to expand its service territory.

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.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2230 be, and it is hereby, granted as amended.

IT IS FURTHER ORDERED that upon final approval of the interconnection agreement and tariff, applicant is granted authority to provide local exchange service in the service areas of US West, ALLTEL, and GTE.

IT IS FURTHER ORDERED that applicant shall 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 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 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 29th day of June, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Frank E. Landis

Arne C. Bagle

//s//Frank E. Landis
//s//Daniel G. Urwiller

Arne C. Bagle
Chairman

ATTEST:

Robert B. Logsdon
Executive Director