

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application     ) Application No. C-2247  
of essential.com, inc. of Bur-     )  
lington, Massachusetts, seeking     )  
authority to obtain a Certificate     )  
of Public Convenience and Neces-     ) GRANTED  
sity to provide local exchange     )  
telecommunications service within     )  
the state of Nebraska.             ) Entered: October 31, 2000

APPEARANCES:

	For the Applicant:	For Arapahoe
Telephone Company;		
	Chris Kallaher	Benkelman Telephone
Company;		
	essential.com, inc.	Cozad Telephone
Company, Inc.;		
	1 Burlington Woods Drive	Hemingford
Cooperative Tele-		
	Burlington, MA 01803	phone Company;
Henderson		
	Cooperative Telephone Company;	
	For the Commission:	and Wauneta
Telephone Company:		
	Chris Post	Mark Fahleson
	300 The Atrium	Rembolt, Ludtke & Berger
	1200 "N" Street	1201 Lincoln Mall,
Suite 102		
Lincoln, Nebraska 68509	Lincoln, Nebraska 68508	

BY THE COMMISSION:

By its application filed March 15, 2000, essential.com, inc. (Essential or the Applicant) of Burlington, Massachusetts, seeks authority to obtain a Certificate of Public Convenience and Necessity to provide local exchange telecommunications service within certain exchanges in Nebraska. Notice of the application appeared in The Daily Record on March 16, 2000. The following parties filed Petitions of Formal Intervention: Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Hemingford Cooperative Telephone Company; Henderson Cooperative Telephone Company; and Wauneta Telephone Company; (collectively referred to hereafter as "the Intervenors"). A hearing on the application was held September 19, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced evidence, through its witness, Chris Kallaher, vice president and general counsel of Essential, and through its filed application, indicating the following:

Essential is a Delaware corporation and has received authority from the Secretary of State to conduct business in Nebraska. Essential filed, concurrently with the present application, an application to provide interexchange telecommunications services in Nebraska. That application, No. C-2246, was approved by the Commission on June 29, 2000.

Essential is currently operating as a reseller of local exchange service in Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Delaware and the District of Columbia. Essential resells the long distance services of Cable & Wireless, Qwest, WorldCom and Global Crossing. Essential has also received authority to provide service in six other states, and has applications pending in 18 other states. Mr. Kallaher stated that Essential would perhaps expand its operations throughout the entire continental United States in the future.

In addition to its telecommunications services, Essential also operates in the electric utility business. Essential markets its telecommunications and energy services primarily over its website, which Essential uses to inform consumers about available services and also to sell its services.

Essential intends to provide resold local exchange services to both residential and business customers. Mr. Kallaher testified that Essential would begin providing service in Nebraska in the second half of 2001, after the company has expanded its operations from the several Bell Atlantic states where it currently operates. Essential is seeking authority to provide local exchange service in those Nebraska territories presently served by Qwest, ALLTEL, Citizens and Sprint United. The applicant is not requesting authority to operate in any rural exchanges in Nebraska, and the application does not constitute a bona fide request for interconnection with any rural carrier.

Essential possesses the managerial and technical experience necessary to provide local exchange service in Nebraska. Essential's management team includes individuals who have been employed as top executives with IBM, Metromedia International, Metrocall, Sky Television and other telecommunications and technology ventures. Essential also possesses the financial resources to implement and sustain its proposed services. Essential has raised a total of approximately \$90,000,000 in venture capital funding, and has taken the initial steps with the Securities and Exchange Commission towards becoming a publicly-traded company. Essential's most recent financial statements filed with the application indicate that Essential is financially qualified to provide local exchange service in Nebraska.

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; 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 local exchange service in the proposed territories. 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 the minimum, the standards and criteria set forth herein.

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

- Through negotiation or arbitration or pursuant to Section
- 252(i) of the Federal Telecommunications Act of 1996 (the
- Act), reach an interconnection/resale agreement with the
- pertinent incumbent local exchange carrier and receive
- Commission approval of the interconnection/resale
- agreement; or

- 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 Federal Act.

Prior to providing local exchange service in any area in the state of Nebraska the applicant must file with the Commission a tariff 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-2247 be, and it is hereby, granted and essential.com, inc. is authorized to provide local exchange services in those exchanges currently served by Qwest, ALLTEL, Citizens and Sprint.

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 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 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 rules and regulations as they pertain to the Nebraska Universal Service Fund.

IT IS FINALLY ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide local exchange service within the specified exchanges in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 31st day of October, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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