

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Application) Application No. C-2279
of MVX.COM Communications, Inc.)
of Novato, California, seeking)
authority to operate as a resale) GRANTED
common carrier of telecommunications)
services within the state of Nebraska.) Entered: July 18, 2000

For the Applicant:
Jon Bruning
1079 N. 204th Avenue
Elkhorn, Nebraska 68022

For the Commission:
Shanicee L. Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

By its application filed April 19, 2000, MVX.COM Communications, Inc. (MVX.COM) of Novato, California, seeks authority to obtain a Certificate of Public Convenience and Necessity to operate as a resale common carrier of telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on April 21, 1999. On June 7, 2000, the applicant, through its undersigned counsel, filed a motion with this Commission requesting the Commission consider and accept a reduced fine as payment in full for its failure to file an annual report while holding authority as an interexchange carrier in Nebraska. Due to the prior revocation of the applicant's authority, a hearing was held on July 11, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above. This hearing was combined with the applicant's hearing on its local exchange application, which can be found at Application No. C-2171.

E V I D E N C E

The applicant presented evidence that it intends to provide switched and dedicated to switched interexchange telecommunications services to all persons or businesses desiring to purchase its service. All network services will be provided by underlying certificated carriers. All network facilities will be the property of other carriers. In support of this application, the applicant produced one witness, Dick Vanaggelen, manager of regulatory affairs, who testified as follows:

MVX.COM is a privately-held company organized in the state of California. The applicant has received authorization from the Nebraska Secretary of State to conduct business in Nebraska. Mr. Vanaggelen indicated that the applicant will be concentrating mainly on smaller and medium sized businesses. He testified that the applicant will market its services through direct mail, telemarketing, and by word-of-mouth. New subscribers will not be required to make deposits and the company bills its own subscribers. Customers will have a toll-free number available for inquiries and complaints. The applicant currently has approxi-

mately 900 customers nationwide. He testified that the company intends to provide operator services, 911 and E-911 services.

Mr. Vanaggelen testified that the applicant possesses sufficient managerial and technical resources and abilities to provide interexchange telecommunications services in the proposed service territory. The senior management team of the Applicant has extensive telecommunications experience and expertise. He testified that its management team included technical experts and regulatory personnel providing the applicant with the adequate skill level needed to provide the proposed telecommunications services. Mr. Vanaggelen also produced a supplemental document which provided evidence of the applicant's managerial and technical expertise. This document was received into evidence and marked as Commission Exhibit No. 5. The applicant is planning to change its name to QuantumShift. If the application is granted, Mr. Vanaggelen testified, applicant would immediately file an application with this Commission for approval of the name change.

Mr. Vanaggelen presented testimony showing that applicant has sufficient financial resources to implement and provision the proposed services in the geographic area of the requested service territory, as demonstrated by the confidential and proprietary financial statements provided to the Commission. He also testified that funding in the amount of \$54 million dollars had been promised by Venture Capitalists which will help the applicant to continue in its growth plan. He testified that this funding commitment was ratification that the applicant was considered by the business community as a successful company.

Mr. Vanaggelen further testified that the granting of the application will be in the public interest because the MVX.COM will provide consumers with a competitive rate.

In support of MVX.COM's motion that the Commission accept a reduced fine, Mr. Vanaggelen testified that MVX.COM had no customers and no revenue in the state of Nebraska in 1998. Mr. Vanaggelen testified that no customers were harmed by their failure to file their annual report. Mr. Vanaggelen also apologized on behalf of MVX.COM and testified that there was no good excuse for the applicant's non-compliance. In addition, the applicant has reorganized its internal structure so that it will have an attorney charged with state compliance issues. Mr. Vanaggelen testified that he will be working closely with the applicant's chief financial officer to implement reporting systems to fulfill reporting requirements in each state.

O P I N I O N A N D F I N D I N G S

Interexchange reseller applications are subject to Commission jurisdiction under Neb. Rev. Stat. §§ 75-604 and 86-805 and Title 291 of the Commission's Rules and Regulations, Chapter 5, Rule 003.12. From examination of the application filed herein, the Commission finds the applicant has provided all the information

required by the Commission, possesses adequate financial resources to provide the proposed service, and possesses adequate technical and managerial competency to provide the proposed service.

After deliberation on the testimony given at the hearing, and of the arguments contained in the applicant's motion, we find that the applicant's motion requesting the Commission to accept a reduced fine for its failure to submit an annual report in 1998 should be granted. We are also of the opinion that MVX.COM has taken the necessary and significant steps to ensure future compliance with Commission orders. We feel more assured that the newly-hired officer charged with regulatory compliance is aware of the severe consequences of future non-compliance with Commission directives. In consideration of the evidenced adduced at hearing, we find that the application should be granted with the condition that any future violation will be regarded as a willful disregard of a Commission order and subject the applicant to revocation of its certificate.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-2279 be, and it is hereby, granted and MVX.COM Communications, Inc. of Novato, California is authorized to operate as a resale common carrier of telecommunications services within the state of Nebraska.

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 FURTHER ORDERED that the motion filed by MVX.COM requesting acceptance of the reduced sum as payment in full for the penalty assessed for its failure to file an annual report as an interexchange carrier should be, and it is hereby granted.

IT IS FURTHER ORDERED that the applicant shall not offer services as a telecommunications carrier until the amount agreed upon by the parties and the signed stipulation evidencing this agreement is received by this Commission.

IT IS FURTHER ORDERED that any future non-compliance with Commission rules, regulations and Commission orders will be

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considered willful and subject the applicant to revocation of its certificate.

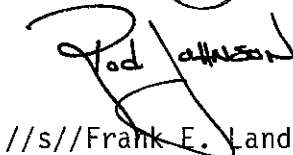
IT IS FURTHER ORDERED that applicant file its current tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FINALLY ORDERED that this order be, and it is hereby made, the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of July, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION


COMMISSIONERS CONCURRING:



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


Chairman

ATTEST:



Deputy Director