

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-2306
Eschelon Telecom, Inc., Minneapolis)
Minnesota, seeking authority to)
provide competitive local exchange) GRANTED
telecommunications services in the)
state of Nebraska.) Entered: August 1, 2000

APPEARANCES:

For the Applicant: For Arapahoe Telephone Company;
Steven G. Seglin Benkelman Telephone Company,
Crosby Guenzel Law Firm Inc.; Cozad Telephone
134 S. 13th Street, Suite 400 Company; Henderson Cooperative
Lincoln, NE 68508 Telephone Company; and Wauneta
Telephone Company;

For the Commission: Mark A. Fahleson
Shanicee Knutson Rembolt, Ludtke & Berger
300 The Atrium 1201 Lincoln Mall, Suite 102
1200 N Street Lincoln, Nebraska 68508
Lincoln, Nebraska 68508

BY THE COMMISSION:

By its application filed May 23, 2000, Eschelon Telecom, Inc. (Applicant or Eschelon), Minneapolis, Minnesota, seeks authority to provide local exchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on May 24, 2000. The following parties filed petitions of formal intervention: Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Henderson Cooperative Telephone Company; and Wauneta Telephone Company (collectively referred to hereafter as the Intervenors). A hearing on the application was held July 19, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

The applicant presented evidence that the applicant is a Delaware corporation headquartered in Minneapolis, Minnesota. The applicant has obtained authority from the Nebraska Secretary of State to transact business in the state of Nebraska. The applicant is authorized to provide telecommunications service in Colorado, Oregon, Minnesota, Nevada, Oregon, Utah and Washington. The applicant filed an application seeking authority to provide interexchange telecommunications services in Application No. C-2307 which was granted by this Commission on July 11, 2000.

In support of its application, the applicant produced one witness, Garth Morrisette, manager of regulatory affairs for the applicant, who testified as follows:

The applicant seeks authority to provide local exchange telecommunications services on a

statewide basis. As part of its offering, Eschelon intends to provide facilities-based and resold local exchange, long distance, private line services, as well as data services including DSL and Internet service. Mr. Morrisette testified that the applicant hopes to initially expand its network into the Omaha area.

Mr. Morrisette testified that the applicant has sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. Each of the applicant's senior executives has considerable experience in the telecommunications industry. He stated that Eschelon is able to deploy a technologically advanced communications network including high capacity Nortel voice and ATM switches and collocation equipment capable of integrating voice and data traffic. Further, as part of Eschelon's strategy it plans to deploy a total of 12 voice switches, 13 advanced switches and 191 collocations. By the end of 2001, Eschelon plans to deploy its own intra-city fiber optic network in its large markets that will connect many of the central offices where it is collocated. It also plans to interconnect its markets using an ATM backbone consisting of its own switches and leased or purchased long haul transport. With Eschelon's network in place, it plans to introduce new advanced data services in its markets including hosting applications services on its network, voice-over DSL and eventually voice-over IP. Where Eschelon does not have its own facilities, it will resell the services of incumbent local exchange carriers such as Qwest. Eschelon employs approximately 730 employees, 28 of which are technicians.

Mr. Morrisette further testified that Eschelon has the financial resources to provision its telecommunications services statewide as evidenced by the financial statements attached to its application. He stated that Eschelon has in place a \$135 million delayed draw term credit commitment from GE Capital. Borrowings will be made available for the purchase of telecommunications equipment and related software licenses and working capital. These borrowings will be repaid over a five-year period commencing in the year 2002. As of December 31, 1999, Eschelon had \$22.4 million outstanding under the credit commitment.

Mr. Morrisette further testified that a grant of the applicant's application will promote the public interest by providing consumers with another choice in provider for advanced telecommunications services.

On cross-examination, Mr. Morrisette confirmed that the applicant has not made a bona fide request of any rural carrier for interconnection, service or network elements. He testified that the company has not yet entered into an interconnection agreement with any incumbent local exchange carrier.

Upon questioning by the Commissioners and staff, Mr. Morrisette testified that the applicant will handle customer complaints directly. Mr. Morrisette testified that the applicant has had no certificates revoked and has not been the subject of any formal complaints in any jurisdiction. Mr. Morrisette also testified that the applicant will primarily market to and serve small- to mid-sized businesses.

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 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 local exchange services statewide. No party in this proceeding refuted the applicant's competence.

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 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 this 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 of the 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-2306 be, and is hereby granted.

IT IS FURTHER ORDERED that the applicant comply with Section 251(f)(1)(B) of the Act 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 Systems 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 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 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 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 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 telecommunications services within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 1st day of August, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Deputy Director

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