

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Application     )     Application No. C-2336  
of Servisense.com, Inc., of     )  
Newton, Massachusetts, seeking     )  
authority to operate as a reseller     )     GRANTED  
of local exchange and interexchange)  
telecommunications services within )  
the state of Nebraska.     )     Entered: March 6, 2001

For the Applicant:  
Richard Wheeler, pro se  
180 Wells Avenue, Suite 450  
Newton, Massachusetts 02459

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

BY THE COMMISSION:

By its application filed June 30, 2000, Servisense.com Inc., (Servisense or Applicant) of Newton, Massachusetts, seeks authority to operate as a reseller of local exchange and interexchange telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on July 3, 2000, pursuant to Commission rules on notice. Interventions were filed by Arapahoe Telephone Company, Benkelman Telephone Company, Cozad Telephone Company, Henderson Cooperative Telephone Company and Wauneta Telephone Company, by Timothy Clare, 1201 Lincoln Mall, Suite 102, Lincoln, NE 68508. A hearing was held by video on January 25, 2001, with appearances as shown above.

E V I D E N C E

In support of its application, the applicant produced one witness,  
Richard Wheeler,  
regulatory affairs coordinator and legal  
counsel for the applicant, who testified as follows:

Mr. Wheeler testified that the applicant is a privately-held company organized under the laws of the state of Delaware and is principally located in Newton, Massachusetts. Applicant has obtained authority to transact business in the state of Nebraska.

Applicant has been authorized to resell local exchange and interexchange telecommunications services in over 43 states. The applicant has never been denied a certificate in any state in which it has filed an application. The applicant has not been the subject of any formal complaints in any other state.

Mr. Wheeler testified that the applicant intends to provide

resold local and long distance telephone service within the state of Nebraska. The applicant proposes to provide switchless, non-facilities-based resold local exchange and interexchange telecom-munications to business and residential customers. All network facilities used to provide the proposed service will be the property of other carriers.

With respect to the applicant's managerial and technical expertise, Mr. Wheeler testified that ServiSense was very qualified to provide the proposed service offerings. Mr. Wheeler was requested to provide the Commission with a late-filed exhibit containing the biographical information of the applicant's managerial team which had been omitted. The applicant filed and the Commission received this information as late-filed Exhibit No. 6. As the testimony and late-filed exhibit demonstrates the applicant's management team possesses over 35 years of combined experience in telecommunications positions.

The witness further presented testimony with respect to the applicant's financial fitness. The financial statements were offered and accepted into evidence along with the application as Exhibit No. 5. The witness testified that the applicant possesses the requisite financial qualifications to provide the proposed services throughout the territory they intend to serve. The applicant recently concluded a round of financing of over ten million dollars. The applicant is in the process of completing another round of financing this spring. Mr. Wheeler testified that the applicant has a very strong financial portfolio and has had great success in the past at raising money privately.

Mr. Wheeler testified that granting ServiSense a certificate to provide the proposed service would be in the public interest.

He stated that the Commission would be giving consumers an alternative choice in providers at a competitive price. Further, the applicant's provisioning of service will enhance the goals of universal service, promote the policies set forth in the Telecommunications Act of 1996 (the Act) and advance the objective of the Commission which is set forth in Application No. C-1128, Progression Order, dated December 19, 1995, relating to the implementation of local exchange competition.

Mr. Wheeler addressed the issue of customer complaints. He stated that the applicant has a 24-hour, seven-day-a-week toll-free number where customers may contact ServiSense and they will get a human voice. Mr. Wheeler also mentioned that customers could also access the applicant's web site and register complaints at ServiSense.com.

Additionally, Mr. Wheeler testified that the applicant entered into a stipulation agreement and will not be going into any rural areas pursuant to that agreement. At the time of the hearing, the applicant intended to target customers in Qwest's territory. Mr. Wheeler confirmed that ServiSense's application was not a bona fide request for interconnection with any carrier protected under the rural exemption of the federal Telecommunications Act of 1996.

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 and interexchange services in the state of Nebraska. 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 interexchange and 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:

- 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
- 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 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 or interexchange telecommunications 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 and interexchange 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-2336 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 interexchange and 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 to 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 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 and interexchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of March, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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