

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2339
of Arrival Communications, Inc.,) and C-2389
San Francisco, California, seeking)
authority to provide local) GRANTED
exchange and interexchange)
telecommunications services)
in Nebraska.) Entered: December 12, 2000

For the Applicant:
Loel Brooks
Brooks, Pansing Brooks, P.C.
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Lincoln, Nebraska 68508

For the Intervenor:
Arapahoe Telephone Company;
Benkelman Telephone Company;
Cozad Telephone Company;
Henderson Cooperative
Telephone Company; and Wauneta
Telephone Company:

For the Commission Staff:
Shanicee L. Knutson
300 The Atrium; 1200 N Street
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Mark A. Fahleson
1201 Lincoln Mall, Suite 102
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BY THE COMMISSION:

By its applications filed July 5, 2000, and September 13, 2000, Arrival Communications, Inc. (Arrival or Applicant) of San Francisco, California, seeks authority to provide local exchange and interexchange telecommunications services in Nebraska. Notice of this application appeared in The Daily Record, Omaha, Nebraska, on July 6, 2000 and September 15, 2000. Petitions of Formal Intervention were filed by Arapahoe Telephone Company, Benkelman Telephone Company, Cozad Telephone Company, Henderson Cooperative Telephone Company and Wauneta Telephone Company (collectively referred to as the Intervenor). A hearing was held on this matter on November 8, 2000, in the Commission Hearing Room, in Lincoln, Nebraska. Because of a clerical error, this application was docketed twice. The Commission consolidated this matter at the hearing and the Commission treats the above-captioned applications as one application for the purpose of this order.

E V I D E N C E

In support of its applications, the applicant produced one witness, Mike Mulkey, Director of Carrier Relations, who testified as follows:

Mr. Mike Mulkey testified that the applicant is a California corporation with its principal office located in San Francisco, California. He testified that Arrival is a fairly new company, founded in early 1999. Arrival is a product of a merger with American Communications Network (ACN), which is also a California-based telecommunications company. Arrival is focused on small business and home office end-users and plans to eventually establish a 22-state network footprint west of the Mississippi.

The applicant's business plan includes resale to Internet service providers and/or other certified competitive local exchange carriers for provision of services. Arrival's services will be DSL-based, broadband high speed data services and voice-over telephony.

Mr. Mulkey testified that Arrival is authorized by virtue of certification or registration to provide a resold and facility-based local exchange services in the state of California, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming. The company is also authorized to provide facility-based and resold non-switched local service in Missouri. Arrival is authorized by virtue of certification or registration to provide interexchange long distance services in Arizona, Arkansas, California, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming.

According to the testimony presented, Arrival plans a facilities-based approach in Nebraska. It will focus on the Omaha, Lincoln, Fremont and Dakota City markets. Arrival expects to have approximately five to seven full time employees in the State of Nebraska. Each of Arrival's area offices will use the resources within their communities to provide for most of their needs. Combined with Arrival's in-area hiring policy and expenditures in local infrastructure, Arrival will make a substantial investment into the community.

Mr. Mulkey further testified that Arrival may also be establishing points of presence outside these collocation areas for the placement of its ATM-based voice-over switching equipments for routing, data services, for Internet access and for the provision of local area networks and wide area network services and virtual private networks.

Mr. Mulkey reported that Arrival has negotiated an interim collocation agreement with Qwest Communications in all fourteen Qwest states. Arrival has also negotiated a section 251/252 interconnection agreement with Qwest for the state of Oregon and is in negotiations with Qwest for the states of New Mexico and Arizona. Mr. Mulkey anticipates completion of an interconnection agreement either by adopting an existing interconnection agreement approved by the Commission or by a pick and choose approach among currently available interconnection agreements approved by the Commission. Arrival expects completion of interconnection agreements with Qwest and Alltel in the near future.

Mr. Mulkey testified that Arrival possesses the requisite managerial and technical experience as presented by the biographical information of the officers and directors in Arrival's application. He testified that Arrival's officers and senior management team possess both educational backgrounds and telecom-specific experience in the areas of network design, operations, operational support systems, software development, customer care,

regulatory affairs and compliance, carrier relations, marketing and sales, finance and cost control.

According to the applicant's witness, the applicant possesses the requisite financial capabilities to provide its proposed services in Nebraska. The witness pointed to the financial statements filed with the application as a confidential exhibit to demonstrate the applicant's financial fitness. Mr. Mulkey further stated that Arrival is now in the midst of a Series B funding round to raise an additional sixty million dollars to support deployment of its proposed services in several states including Nebraska. The equity funding will also be supplemented by equipment vendor financing arrangements which Arrival is actively pursuing.

Mr. Mulkey added that approving Arrival's application would advance the public's interest. He testified that Arrival's entry into the Nebraska market will promote the public interest by increasing the level of competition in Nebraska's telecommunications market. Mr. Mulkey concluded that ultimately, competition will compel all local and interexchange telecommunications service providers to operate more efficiently and pass the resultant cost savings on to customers. In addition, as a result of competition, the overall quality of local exchange and interexchange service will improve.

Upon cross-examination by Mr. Mark Fahleson, the witness confirmed that Arrival's application did not constitute a bona fide request for interconnection with any rural carrier in the state.

Upon questioning by the Commission and Commission staff, Mr. Mulkey further confirmed that Arrival does not intend to rely on telemarketing operations as a point of contact, but rather, will establish business relationships through face to face interaction. Arrival does not intend to market by mass mailing. Mr. Mulkey also commented that Arrival will abide by the FCC Slamming rules. Arrival's business practice is to procure signed letters of agency to authorize all customer services including PIC changes. The witness stated that Arrival is focused on business customers and as such will have a signed letter of agency to authorize any switch in provider service. Mr. Mulkey further testified that Arrival's billing will be vendored out. The witness stated that he was not sure whether the applicant intended to require advance deposits. The witness is aware of the Commission's bond requirement should the applicant require advance deposits from its subscribers.

Mr. Mulkey further stated that customer service will be available for trouble reporting and technical assistance twenty-four (24) hours per day, seven (7) days a week. Billing inquiries, service order requests and other non-repair service inquiries will be handled during the hours of 7:00 a.m. to 7:00 p.m. CST, seven (7) days a week. Customers may contact Arrival's Customer Service Department in writing or by telephone using the address or toll-free number provided on each invoice for service.

For its own equipment and facilities, centralized network

monitoring, diagnostics and dispatch will be performed from one of Arrival's regional network operations centers. Due to remote diagnostic capability, in most instances Arrival's network monitoring personnel will be aware of troubles before the customer. If problems occur that cannot be repaired remotely, technicians will be dispatched to repair the trouble.

In addition, Mr. Mulkey explained the circumstances surrounding certain customer complaints in other jurisdictions. None of the complaints have risen to formal complaints and have largely dealt with delays in providing services due primarily to difficulty obtaining services from the incumbent local exchange provider.

No other parties introduced testimony or evidence at this 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 interexchange and local exchange service 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:

(a) 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

(b) 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's 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 interexchange or 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 Section 002.21 of the Neb. Admin. R. & Regs. Title 291, ch. 5.

As a provider of interexchange and 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 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 Nos. C-2339 and C-2389 be, and hereby are, granted.

IT IS FURTHER ORDERED that Application Nos. C-2339 and C-2389 be, and hereby are consolidated into one docket which shall be referenced hereinafter as Application No. C-2339.

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 - 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 interexchange and local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of December, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

ATTEST:

Executive Director

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