

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2363
of Telergy Network Services, Inc.,)
East Syracuse, New York, seeking)
authority to obtain a certificate) GRANTED
of authority to provide resold)
and facilities-based local ex-)
change services within the state)
of Nebraska.) Entered: January 23, 2001

APPEARANCES:

For the Applicant:	For the Intervenor:
Theresa Atkins, pro se	Arapahoe Telephone Company;
One Telergy Parkway	Benkelman Telephone Company,
East Syracuse, New York 13057	Inc.; Cozad Telephone Company;
	Henderson Cooperative
	Telephone Company; and Wauneta
	Telephone Company:

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

BY THE COMMISSION:

By its application filed August 7, 2000, Telergy Network Services, Inc. of East Syracuse, New York (Telergy or Applicant) seeks authority to provide resold and facilities-based local exchange telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on August 9, 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. A hearing on the application was held on December 12, 2000, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

E V I D E N C E

In support of its application, the applicant produced one witness, Theresa Atkins, assistant general counsel, who testified as follows:

Ms. Atkins testified that applicant is a facilities-based provider headquartered in Syracuse, New York and is authorized to transact business in the state of Nebraska. The applicant is presently certified to provide

telecommunications services in about 30 states and has applications pending in the remainder of the states. Telergy has been providing operations in New York, Rhode Island and New Jersey. The applicant started its operations in New York in 1996. Telergy has built about 2,700 route miles of fiber in the northeast corridor, primarily in New York and Canada. Ms. Atkins testified that Telergy has the only contiguous right-of-way in New York. Telergy has also recently partnered with GPU and El Paso Global Networks out of Texas. Ms. Atkins further testified that Telergy currently employs approximately 650 people and has about 6,000 access lines.

Telergy will not require deposits from customers in the regular course of business. The applicant does understand, however, in the event that it does require deposits, the Commission may require Telergy to pay a bond. Telergy will have a customer care center operating at all times for customer assistance. Telergy will market face-to-face marketing. When the applicant does start rolling out services in Nebraska, it will have a local sale office. Telergy does not use any telemarketers or agents.

Ms. Atkins further stated that Telergy proposes to provide a complete array of advanced data services. Its service packages include traditional local and long distance, ADSL and other Internet access services, frame relay, video storage and transport, disaster recovery and other advanced services. Its primary focus will be business customers, however, Ms. Atkins testified that Telergy will seek out a residential customer base as well.

Ms. Atkins testified that the applicant has the requisite managerial and technical capacity to provision telecommunications services in the requested territory in Nebraska. She testified that Telergy has a considerable amount of management experience. Telergy's chief operating officer has over 30 years of telecommunications experience from Bell Atlantic. The applicant's chief technology officer has gained the requisite technical experience from working for companies such as British Telcom, AT&T and Bell Labs. She further testified that Telergy has hired other managers from Tele-Globe, Excel Communications and several other competitive carriers.

Ms. Atkins further testified that Telergy possesses the financial ability to provision its proposed services throughout the state. She testified that Telergy plans on making its initial public offering within the next year. Telergy has substantial credit facility financing through large institutions and vendor financing through relationships with companies such as Nortel.

Ms. Atkins testified that approving Telergy's application would be in the public interest for Nebraska citizens. She stated that the applicant will bring high-speed connectivity to businesses and learning institutions, and connect them to areas where they normally would hesitate to put branch offices or other types of facilities.

Upon cross-examination, Ms. Atkins confirmed that Telergy's application does not constitute a bona fide request for interconnection with any of the intervenors even though the application requests statewide authority.

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;

(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 within the state of Nebraska. 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 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 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 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 Nebraska Public Service Commission that Application No. C-2363 be, and is hereby, 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 the 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 - 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 orders, rules and regulations as they pertain to the Nebraska Universal Service Fund.

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 service as described in state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of January, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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