

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ApplicationApplication No. C-2364
of Essex Communications, Inc.)
dba eLEC Communications of)
Melville, New York, seeking)
authority to provide facilities-GRANTED
based local exchange services)
within the state of Nebraska.) Entered: June 19, 2001

APPEARANCES:

For the Applicant:
Loel Brooks Inc.
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Lincoln, Nebraska 68501

For the Commission:
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Lincoln, Nebraska 68508

For Arapahoe Telephone Company;
Benkelman Telephone Company;
Cozad Telephone Company;
Hemingford Cooperative
Telephone Company; and
Wauneta Telephone Company:
Mark Fahleson
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BY THE COMMISSION:

By its application August, 8, 2000, Essex Communications, Inc., d/b/a eLEC Communications (Essex or Applicant) of Melville, New York, seeks authority to provide 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; 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 May 8, 2001, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, Paul Riss, Chief Executive Officer (CEO), Chief Financial Officer (CFO) and treasurer for Essex Communications, who testified as follows:

Mr. Riss became involved in the competitive local exchange carrier (CLEC) industry as one of the original members of the Board of Directors of Access One Communications, a company that was bought by Talk America

in August of 2000. As the CEO of the public company, he was involved in the purchase of Essex Communications, Inc. and subsequently became the president and CFO of Essex. Essex is a privately-held company that has received authorization to conduct business in the state of Nebraska.

Mr. Riss further testified through his prefiled testimony that Essex Communications is currently certificated or has registered to provide local and long distance service in 35 states. Essex has applications pending in the remaining 13 continental states. At no time has an application been denied nor the subject of a formal complaint

Mr. Riss further testified that Essex proposes to provide both unbundled network elements-platform (UNE-P) facilities-based and resold local exchange services initially within the Qwest territory of Nebraska. Essex targets its marketing efforts toward business customers but will offer service to the residential locations of the business customers.

Mr. Riss further testified that the applicant has the sufficient managerial and technical resources and abilities to provide local exchange service in the proposed territory. The witness stated that on their management team was Michael Adana, who has been involved in the telecommunications industry for more than 25 years. In addition Patrick Freeman, the vice president has more than 10 years experience in the industry.

Mr. Riss further testified that the applicant has sufficient financial qualifications to provide the services throughout the territory they intend to serve. Such financial records were set forth in the applicant's initial application which were reviewed by the Commission.

Mr. Riss further testified that granting the above-captioned application will be in the public's best interest because Essex will enhance telecommunications competition in Nebraska. Such competition encourages technological innovation and efficient use of resources. The witness further states that Essex will provide Nebraska consumers with a wider choice of services and providers from which to select their long distance and local service provider. The witness further testified that Essex will provide less expensive service and better service than the major local exchange carrier (LEC) has been providing.

Mr. Riss further testified that Essex has two different customer service centers to receive customer questions and complaints that can be accessed through a toll-free number. Essex hopes to have in place a way

for customers to check their bill on the Internet. In addition, Essex will provide 911 and E911 services, telephone directories, directory assistance and intraLATA toll dialing parity to its customers as part of its interconnection agreement with Qwest.

Mr. Riss testifies that he understood any request for interconnection with a rural telephone provider may trigger a hearing by this Commission as to whether or not the rural exemption discussed in the Telecommunications Act of 1996 (Act) applies to that particular rural telephone company.

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 service in the proposed territories. 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.

This order does not terminate, waive or in any manner diminish the exemptions and protections created by the Federal Telecommunications Act of 1996 for rural carriers, as defined by the Federal Act. This order does not address the issue of the rural local exchange carriers' exemption under the Federal Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Federal Act.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2364 should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2364 be, and it is hereby, granted and Essex Communications, Inc., dba eLEC Communications is authorized to provide facilities-based local exchange services in the territories currently serviced by Qwest Communications, Inc.

IT IS FURTHER ORDERED that the applicant file an additional application requesting expanded authority if or when the applicant desires to provide local exchange service in territories other than those of Qwest.

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 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 comply with all necessary statutes and Commission rules and regulations as they pertain to the Nebraska Universal Service Fund.

IT IS FINALLY ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide local exchange service within the authorized territories in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of June, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director