

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application            ) Application No. C-2397  
of Contact Communications, Inc.)  
of Riverton, Wyoming seeking auth-    ) GRANTED  
ority to obtain a Certificate of        )  
Public Convenience and Necessity to    )  
provide local service in Nebraska.    ) Entered: May 8, 2001

APPEARANCES:

For the Applicant:  
Alex Davison  
P.O. Box 945  
Cheyenne, Wyoming

For the Intervenor:  
Arapahoe Telephone Company;  
Benkelman Telephone Company;  
Cozad Telephone Company;  
Henderson Cooperative Telephone  
Company; and Wauneta Telephone  
Company:  
Mark A. Fahleson  
Rembolt Ludtke & Berger  
1201 Lincoln Mall, Suite 102  
Lincoln, Nebraska 68508

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

BY THE COMMISSION:

By its application filed October 2, 2000, Contact Communications, Inc. (Contact or Applicant) of Riverton, Wyoming, seeks authority to provide local exchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record October 3, 2000. A hearing on the application was held March 27, 2001, 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 two witnesses and the following evidence:

Mr. Steve Mossbrook, President and CEO of Contact Communications testified that he has owned and operated seven companies in various fields and most recently in the Internet business. He is currently the executive of Wyocom, LLC, Contact Communications and Wyoming.com, LLC. Contact was created initially to provide services within Wyoming through its retail Internet service provider.

Contact is a Wyoming corporation, and has received the authority by the Secretary of State to conduct business in Nebraska as a foreign corporation. Contact has been granted certification in Montana, Oregon, Colorado, Kansas, Wisconsin, Illinois and is currently seeking

certification in a number of other states. The applicant has not been denied a certificate in any state where it has tendered an application. Contact proposes to provide wholesale services to Internet service providers including, Internet call diversion, DSL and IP-based voice services. The applicant will not have a direct relationship with the retail consumer and no advanced deposits will be required. Contact's service will be primarily directed toward rural areas and cities with a population of less than 250,000.

Mr. Mossbrook testified that the applicant possesses the necessary financial capacity to deploy the proposed telecommunications services throughout the state as demonstrated by the financial statements filed under seal with the Commission. Copies of the applicant's financial statements were offered and accepted as Commission Exhibit No. 5. In addition to the financial backing listed in Exhibit No. 5, Mr. Mossbrook testified that he brings his own personal resources which will provide financial support and stability to the applicant.

Mr. Mossbrook further testified that the applicant possesses the requisite managerial expertise to support a grant of Contact's application. Mr. Mossbrook presented evidence demonstrating that other members of Contact's senior management team have individually accumulated more than 23 years of experience in the telecommunications industry.

Mr. Frostie Sprout, vice president of technology for Contact, further testified in favor of Contact's technological and managerial expertise to provision the proposed service throughout the requested territory. The applicant's data center is located in Riverton, Wyoming. The applicant proposes to use a mixture of Lucent and CISCO hardware with its main data center. The applicant's repair system is handled both as an internal ticketing system with the ability to do both reactive and proactive ticketing. The applicant's repair customer service center is open until 10:00 p.m. with after-hour support available for off-premises paging. The applicant's senior engineers have been specifically trained by Lucent to handle the hardware that the applicant is currently using.

Upon cross-examination by Mr. Fahlson, Mr. Mossbrook testified that Contact is not looking to provide basic plain old telephone service (POTS). They intend to offer mainly advanced services. Contact's application does not represent a bona fide request for interconnection with any rural carrier in the state of Nebraska. To date, Contact has not sought to challenge or lift the rural exemption. Contact has not commenced negotiations for interconnection with any carrier specifically covering Nebraska.

Upon questions by the Commission staff, Mr. Mossbrook testified that a grant of the application would serve the public interest by providing a choice in service providers. The witness explained that Contact offers some unique choices conditioned for the needs of Nebraska consumers.

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.

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 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 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 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 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-2397 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 - 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 telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of May, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director