

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-2398  
of 360networks (USA) Inc. of )  
Lakewood, Colorado seeking auth- )  
ority obtain a Certificate of Public )  
Convenience and Necessity to ) GRANTED  
provide resold and facilities-based )  
local exchange telecommunications )  
services within the state of )  
Nebraska. ) Entered: January 9, 2001

APPEARANCES:

For the Applicant:  
Jon C. Bruning  
Bruning Law Office  
1079 N. 204th Ave.  
Elkhorn, Nebraska 68022

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

For the Intervenors,  
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

BY THE COMMISSION:

By its application filed October 3, 2000, 360network (USA) Inc. of Lakewood, Colorado (Applicant) seeks authority to provide resold and facilities-based local exchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on October 4, 2000. No parties filed petitions of formal intervention. A hearing on the application was held November 28, 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, Julie Hawkins, assistant general counsel, who testified as follows:

Ms. Hawkins testified that the applicant is a privately-held company organized under the laws of the state of Nevada that has its headquarters in Lakewood, Colorado. Applicant has obtained authority to transact business in the state of Nebraska. Applicant was granted authority to provide interexchange telecommunications

services in the state of Nebraska in Application No. C-2078 under the name of Worldwide Fiber Networks, Inc.

Applicant has been authorized to provide local exchange telecommunications services in about 12 other states and holds authority to provide interexchange services in about 42 other states. The applicant has not been denied a certificate in any state in which it has made application.

Ms. Hawkins testified that the applicant intends to provide all forms of intrastate local exchange telecommunications services throughout the state. Initially, however, the applicant will provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services. The applicant plans to offer its fiber optic transmission services to incumbent local exchange carriers, competitive local exchange carriers and Internet service providers.

Ms. Hawkins further testified that the applicant has sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. She stated that the applicant had strong technical competency and extensive managerial expertise in telecommunications as evidenced by Exhibit 3 to the application on file with the Commission.

Ms. Hawkins presented financial statements to the Commission as evidence of the applicant's financial qualifications. The financial statements were offered and accepted into evidence as Commission Exhibit 6. The witness testified that the applicant possesses the requisite financial qualifications to provide the proposed services throughout the territory they intend to serve.

Ms. Hawkins further testified that granting the above-captioned application will be in the public's best interest because it will provide consumers with an alternative choice in providers at a competitive rate. The witness testified that the applicant will bring state of the art telecommunications services to Nebraska which few others could match. 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.

Ms. Hawkins testified that at the time applicant should decide to offer services to end-users in Nebraska, customers will be able to inquire about bills through a toll-free number during regular business hours. At that time, customers will have access to the operator services as well as 911 services through the existing incumbent local exchange carriers (ILECs). At that time, applicant will contract with ILECs to provide customers with directory listings and for the distribution of directories.

Ms. Hawkins testified that she 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 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 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 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-2398 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

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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 9th day of January, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Francis J. Johnson*

*Ann C. Boyle*

*Paul Johnson*

//s//Frank E. Landis  
//s//Daniel G. Urwiller

*Frank J. Jundt*

ATTEST:

*And S. Pollock*

Executive Director