

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2427
of Applied Communications)
Technology, Inc., seeking authority)
to operate as a competitive local) GRANTED
exchange carrier of tele-)
communications services within)
the state of Nebraska.) Entered: June 5, 2001

APPEARANCES:

For the Applicant:

Jack W. Besse
Knapp, Fangmeyer, Aschwege,
Besse & Marsh, P.C.
P.O. Box 10
1323 Central Avenue
Kearney, Nebraska 68848-001

For the Commission:

Shanicee Knutson
300 The Atrium
1200 N Street
P.O. Box 94927
Lincoln, Nebraska 68508

BY THE COMMISSION:

By its application filed November 17, 2000, Applied Communications Technology, Inc. (ACT or applicant), of Arapahoe, Nebraska seeks authority to operate as a competitive local exchange carrier of telecommunications services within the State of Nebraska. Notice of the application appeared in The Daily Record on November 21, 2000. No formal petitions of intervention were filed. A hearing on the application was held on May 23, 2001, in the Commission Hearing Room, Lincoln, Nebraska with the appearances as shown above.

E V I D E N C E

In support of its application, the applicant produced one witness, John M. Koller, President of ACT, who testified and presented the following evidence:

Applicant is a wholly-owned subsidiary of the Arapahoe Telephone Company with its principal place of business in Arapahoe, Nebraska. The Arapahoe Telephone Company has previously been granted certificates of public convenience and necessity from the Nebraska Public Service Commission for operation as the incumbent local exchange carrier (ILEC) in Arapahoe, Holbrook, Henley, Brule, Loomis, Farnam and Overton, Nebraska.

ACT is a Nebraska corporation with its principal place of business in Arapahoe, Nebraska. Mr. Koller testified that he is the registered agent for the corporation and can be served at the corporation's principal place of business at 524 Nebraska Avenue in Arapahoe, Nebraska.

The applicant seeks to provide resold and facilities-based local exchange services in Nebraska. ACT intends to offer advanced services, including DSL service as well as basic local exchange and private line services which include but are not limited to operator-assisted services, directory assistance and emergency services. Customer complaints can be sent to the Arapahoe office. The applicant also has a toll free number for customer inquiries or complaints.

Mr. Koller next testified that the applicant possesses the requisite managerial and technical resources to provide telecommunication services. He testified that the company would be utilizing the Arapahoe Telephone Company's employees and technical expertise as needed in this new service area and it would not affect or impair either the telephone company or ACT's ability to respond to customers. Mr. Koller further stated that the applicant's officers and directors are the same officers and directors of the Arapahoe Telephone Company. The applicant offered the Commission accepted Exhibit No. 6, which identifies the officers and directors and their respective positions with ACT.

Neither ACT nor its parent company, the Arapahoe Telephone Company, has ever had a formal complaint docketed with the Nebraska Public Service Commission or with the Federal Communications Commission (FCC). There has also never been an investigation or an enforcement action against ACT or its parent company, its officers, directors or shareholders by the Public Service Commission or the FCC.

Mr. Koller further testified that the company has the financial means to provide telecommunications services,

particularly since the applicant can draw upon the resources of its parent corporation. In support of Mr. Koller's testimony regarding the financial capabilities of the applicant, Mr. Koller stated that copies of the applicant's past three years of financial statements were filed with the Commission under proprietary cover and reflect the applicant's financial fitness to provide the proposed telecommunication services within Nebraska.

Mr. Koller further testified that the approval of this application would be in the public interest for two reasons. First, the approval of ACT's application would provide customers with an alternative choice in providers. Second, the applicant intends to offer advanced services which may not be otherwise available to consumers in the proposed territory.

Even though applicant requests statewide authority, Mr. Koller stated the applicant intends on initially providing telecommunications services only in a portion of undeveloped land that lies to the east of the Arapahoe Telephone Company's Brule exchange in Keith County. The incumbent local exchange carrier in this territory is Qwest Communications. The applicant does not intend to utilize any of Qwest's facilities, but instead will utilize its own facilities by transporting all traffic through the Arapahoe Telephone Company's Brule switch. Mr. Koller testified that two-way Extended Area Service (EAS) exists between the Ogallala and Brule exchanges.

Upon cross-examination by Ms. Knutson, Mr. Koller testified that he had managed the Arapahoe Telephone Company for over 30 years. Mr. Koller further stated that the applicant will not provide local exchange services in its affiliated incumbent local exchange carrier's territory pursuant to the Commission's Order in Docket No. C-1839/PI-22. He also testified that the applicant is considering entering into an interconnection agreement with the Arapahoe Telephone Company to haul the traffic and utilize its equipment. Mr. Koller, however, clarified through a late-filed exhibit that this application did not represent a bona fide request for interconnection with any rural carriers pursuant to the Telecommunications Act of 1996 (the Act).

No other parties introduced testimony or evidence at the hearing.

O P I N I O N S 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, insures the continued quality of telecommunication 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.

Although applicant is a wholly-owned subsidiary of the Arapahoe Telephone Company, this is not an application by a competitive local exchange carrier to provide local exchange

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 any other interexchange and local exchange carriers, except obligations imposed on the incumbent local exchange carriers pursuant to Section 251(c) of the Telecommunications Act of 1996.

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 to 1306 (Relay Act) and defined in Title 291, Chapter 5, Section 001.01(B) of the Nebraska Administrative Rules and Regulations, 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 applicable statutes, on or before April 30th 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 thirty (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.

services in its affiliated incumbent local exchange carrier's local exchange within the meaning of our order in Docket No. C-1839/PI-22.

Before the applicant is allowed to provide local exchange service to its users in the Ogallala exchange, applicant shall, through negotiation or arbitration, reach an interconnection agreement with the Arapahoe Telephone Company and receive Commission approval of the agreement.

Before the applicant is allowed to provide local exchange service to its users in any other exchange that is not exempt from competition pursuant to Section 251(f)(1)(B) of the Act, 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 that 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.

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 Title 291, Chapter 5, Section 002.21 of the Nebraska Administrative Rules and Regulations.

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-2427 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

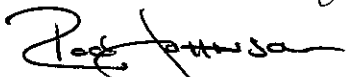
IT IS FURTHER ORDERED that this order be, and hereby is, made the Commission's official certificate of public convenience and necessity to the applicant to provide local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of June, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


//s//Frank E. Landis


Chairman

ATTEST:


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
