

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2429
of Claricom Networks, Inc., d/b/a)
Staples Communications Networks,)
Shelton, Connecticut, seeking au-)
thority 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: April 17, 2001

APPEARANCES:

For the Applicant:

Paul Schudel
Woods & Aitken
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Lincoln, Nebraska 68508

For the Commission:

Shanicee Knutson
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BY THE COMMISSION:

By its application filed November 21, 2000, Claricom Networks, Inc., d/b/a Staples Communication Networks of Shelton, Connecticut (Claricom or Applicant) seeks authority to operate as a reseller of local exchange telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on November 22, 2000. A petition of formal intervention was filed on December 22, 2000 by Timothy Clare, on behalf of Arapahoe Telephone Company, Benkelman Telephone Company, Cozad Telephone Company, Henderson Telephone Cooperative Telephone Company and Wauneta Telephone Company. A hearing on the application was held February 6, 2001, in the Commission Library, 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, Joyce Johnson, corporate regulatory counsel and assistant secretary of Claricom, who testified and presented evidence as follows:

Applicant is a privately-held Delaware company which maintains its principal headquarters in Shelton, Connecticut. Claricom has obtained authority to transact business in the state of Nebraska through the Nebraska Secretary of State. Applicant was granted authority to provide interexchange telecommunications services in the state of Nebraska in Application No. C-1511.

Applicant presented evidence that it is authorized to provide local exchange telecommunications services in about 14 other states. Ms. Johnson testified that Claricom's certificate of convenience and necessity was revoked in Oregon because it had failed to timely file information to the Oregon Commission's Universal Service Fund department. The applicant's certificate was also revoked in Wisconsin for failure to file an annual report. Claricom was seeking reinstatement in both state commissions. Ms. Johnson testified that Claricom was also fined by this Commission the amount of \$2,600 for failure to timely file its annual report.

Claricom intends to operate as a non-facilities-based reseller of local exchange services and intends to resell all available services the underlying incumbent local exchange carrier provides. Claricom intends to offer service within the existing Nebraska service territories of Qwest Corporation.

With respect to the noncompliance issues, Ms. Johnson testified that these infractions occurred during February 1999 when Claricom's parent company was merged into a transitory of Staples, Inc. Staples tried to consolidate the financial reporting system. As a result some departments were eliminated, responsibilities were outsourced, and compliance mailings were not sent to the right offices. In order to ensure that these issues do not arise in the future, Ms. Johnson testified, Claricom has contracted with a third party whose primary business function is to assist in the preparation and timely filing of compliance filings.

Claricom has not been denied a certificate in any state in which it has filed an application.

Ms. Johnson testified that the applicant possesses the requisite managerial and technical resources to provide the proposed service offerings. A number of its managers have been at Claricom for more than eleven years. Claricom maintains a broad base of experienced employees from telecommunications industry with a large number of former regional bell operating company employees with managerial and technical experience.

Financially, Ms. Johnson stated, Claricom is operating at a profit. It has been in operation for a number of years. Applicant can draw upon the resources of its parent corporation as well. Ms. Johnson further testified that Exhibit F to its application and Exhibit 7 both demonstrate Claricom's financial fitness to provide the proposed telecommunications services within Nebraska.

Ms. Johnson testified that Claricom has taken preventive actions to protect customers from slamming. It has a third party verifier to verify the information on every change and that it does not install service without a letter of authorization. Claricom does not currently anticipate using telemarketing tactics in Nebraska. However, it is possible that it may go through a telemarketing campaign at some point in the future.

Ms. Johnson testified that Commission approval of its application would be in the public interest as it would provide an additional provider offering a competitive rate. Claricom has a toll-free number in operation 24 hours a day, seven days a week to field customer complaints.

Upon cross-examination, Ms. Johnson testified that at this time, Claricom plans to offer its services only in Qwest's territory. Ms. Johnson confirmed that the above-captioned application does not represent a bona fide request for interconnection with any rural carriers subject to the rural exemption in the federal Telecommunications Act of 1996.

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 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-2429 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 (the Act) 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 17th day of April, 2001.
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director