

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application       ) Application No. C-2509  
of NOS Communications, Inc. of       )  
Las Vegas, Nevada, seeking       )  
authority to operate as a       ) GRANTED  
facilities-based provider of local   )  
exchange telecommunications ser-   )  
vices within the state of Nebraska. ) Entered: September 5, 2001

APPEARANCES:

For the Applicant:  
Steven G. Seglin  
Crosby, Guenzel, Davis, Kessner  
134 South 13th Street  
Lincoln, NE 68508

For the Commission:  
Shanicee Knutson  
Wayne Bena  
1200 N Street  
Lincoln, Nebraska 68508

BY THE COMMISSION:

By its application filed April 2, 2001, NOS Communications, Inc. (NOS or Applicant) seeks authority to operate as a reseller and facilities-based provider of local exchange telecommunications services within the state of Nebraska. Notice of the application appeared in The Daily Record on April 5, 2001. A hearing on the application was held on July 11, 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 one witness, Mr. Randy Lemmo, vice-president operations for the applicant, who testified as follows:

Mr. Lemmo testified that the applicant is a closely-held subchapter S corporation organized under the laws of Maryland. 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-920 under the name of NOS Communications, Inc.

Applicant has been authorized to provide local exchange telecommunications services in 26 other states and holds authority to provide interexchange telecommunications services in 48 states.

The applicant has not been denied a certificate in any state nor has it been subject to any formal complaints in which it has filed an application.

Mr. Lemmo testified that the applicant intends to provide intrastate local exchange telecommunications services. Initially, however, the applicant will provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services to business and residential consumers.

Mr. Lemmo further testified that the applicant has sufficient managerial and technical resources and abilities to provide local exchange telecommunications services in the proposed service territory. He stated that the applicant had strong technical competency and extensive managerial expertise in telecommunications as demonstrated on Commission Exhibit No. 4, which was offered and accepted into evidence at the hearing. According to the evidence presented, the combined senior management and technical team of the applicant possesses years of experience in the telecommunications industry.

Mr. Lemmo 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 No. 3. The witness testified that the applicant possesses the requisite financial qualifications to provide the proposed services throughout the territory they intend to serve.

Mr. Lemmo 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. The applicant will not require deposits from new subscribers. The witness further stated that applicant understands that the Commission may require a performance bond if the company requires advance deposits.

Mr. Lemmo testified 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 (the Act) applies to that particular rural telephone company.

Mr. Lemmo further testified that granting NOS a certificate to provide the proposed service would be in the public interest. He stated that the Commission would be giving consumers an alternative choice in providers at a competitive price.

Mr. Lemmo clarified that NOS is requesting statewide authority but will initially provide service in the territory served by Qwest.

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 nor 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 nor in any manner diminish the exemptions and protections created by the Telecommunications Act of 1996 for rural carriers, as defined by the Act. This order does not address the issue of the rural local exchange carriers' exemption under the Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Act.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2509 should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2509 be, and it is hereby, granted and NOS Communications, Inc., is authorized to operate as a reseller and facilities-based provider of local exchange telecommunications services within the state of Nebraska.

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 through 86-1306 (Relay Act) and defined in Neb. Admin. R. & Regs. 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 5th day of September, 2001.

COMMISSIONERS CONCURRING: NEBRASKA PUBLIC SERVICE COMMISSION

Chairman

ATTEST:

Executive Director