

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Application) Application No. C-2522
of Z-Tel Communications, Inc.,)
Tampa, Florida, seeking authority)
to provide facilities-based local) GRANTED
exchange service within the)
state of Nebraska.) Entered: August 7, 2001

APPEARANCES:

For the Applicant:
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For the Commission:
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BY THE COMMISSION:

By its application filed April 30, 2001, Z-Tel Communications, Inc. (Z-Tel or the Applicant) of Tampa, Florida, seeks authority to provide resold and facilities-based local exchange services in the state of Nebraska. Notice of the application appeared in The Daily Record, Omaha, Nebraska, on May 2, 2001. No protests or interventions were filed. A video hearing on the application was held on July 11, 2001, in the Commission Library with appearances as shown above.

In support of its application, the applicant produced one witness, Timothy Seat, vice president of Regulatory Affairs, who testified as follows:

Z-Tel is a corporation organized under the laws of the State of Delaware, qualified to do business in Nebraska as a foreign corporation. Z-Tel seeks authority to provide facilities-based and resold local exchange telecommunications services in the geographic areas served by Qwest, Citizens, Sprint and ALLTEL. The applicant will primarily market residential customers to whom it will provide facilities-based local exchange services utilizing an unbundled network element platform (UNE-P). Having been granted authority to operate as an interexchange carrier of telecommunications services in Nebraska by Commission order (Application No. C-2205) entered February 29, 2000, Z-Tel intends to provide a network bundled telecommunications service, which would include long distance service, local service, voice mail, custom calling and CLASS features, access to emergency call services (e.g., 911), directory assistance, operator-assisted service and other ancillary services. Z-Tel intends to provide service using its own facilities in conjunction with unbundled local loops and other network elements

obtained from the incumbent local exchange carriers (ILECs). However, applicant also requests resale authority in order to offer service through the resale of bundled ILEC services if needed.

Mr. Seat stated that the applicant currently has a preliminary interconnection agreement in place with Qwest and will pursue interconnection agreements with other local exchange carriers as needed to ensure the provisioning of telecommunications services, including operator services, 911 services and Telephone Relay Service.

Mr. Seat noted that the applicant had submitted the year-end 2000 financial statements of its parent company, Z-Tel Technologies, Inc., as proof of the applicant's financial stability. Applicant will utilize its current customer service, operations, management and technical workforce and infrastructure to provide its proposed services in Nebraska; therefore, no new significant capital expenditures will be required to expand the applicant's services in Nebraska. Costs will consist of leasing UNE-P and additional administrative and sales overhead, which are not projected to be significant expenses for the applicant.

Mr. Seat further testified that the senior management team of Z-Tel has extensive experience in both telecommunications and management. Mr. Seat stated that Z-Tel is currently certificated to provide long distance services in all 50 states, and local exchange service in 34 states. Applicant is in the process of obtaining approval to provide nationwide local service. With approximately 380,000 residential local exchange access line subscribers, the applicant has developed considerable technical expertise. Customer service representatives are extensively trained and available toll-free 24 hours per day, seven days per week.

Mr. Seat added that granting Z-Tel authority to provide competitive local exchange services in Nebraska would advance public interest. Mr. Seat testified that Z-Tel's entry into the Nebraska market will promote the public interest by increasing the level of quality, innovation and competition in Nebraska's telecommunications market. Competition to date has primarily benefitted large businesses, whereas Z-Tel will expand service and pricing options for Nebraska residential customers. Such competition will improve the overall quality of local exchange service. The proposed bundling of local and long distance service, custom calling features, voice mail and optional internet access is unique in the marketplace and offers an alternative to subscribing to separate plans from separate providers.

Further, Mr. Seat stated that Z-Tel will abide by all applicable rules and regulations relating to the provision of competitive local exchange services, as well as any other applicable state or federal rules, regulations or statutes.

Mr. Seat testified as to the timing of interconnection agreements with Sprint or ALLTEL, in which he stated that Z-Tel will work with Qwest first; then Citizens, Sprint and ALLTEL. All agreements could possibly be approved within six months from the date of this order.

Mr. Seat testified that Z-Tel will not hire any Nebraska employees. Rather, the applicant will contract with the incumbent local exchange carriers for such services as are needed in addition to the applicant's centralized operations.

In response to questions posed by the Commission, Mr. Seat testified that the applicant is seeking authority only in the geographic territories served by Qwest, Sprint, Citizens and ALLTEL.

Mr. Seat also confirmed that the application was not a bona fide request for interconnection; that the applicant did request a waiver of the Uniform System of Accounts reporting system, as the applicant employs Generally Accepted Accounting Principles; that the applicant has never been denied an application for authority; and that there are no formal complaints against the applicant.

Mr. Seat further stated that applicant will not require a deposit before a customer may begin receiving service. He also described the applicant's existing internal billing group in response to questions regarding billing systems.

Mr. Seat confirmed that the applicant will provide access to operator and 911 services and comply with the provisions of the Telecommunications Relay System, and that the applicant will contribute to the Nebraska Universal Service Fund. He testified that the applicant has a zero-tolerance policy regarding slamming and will not engage in telemarketing, sweepstake offers or pressure tactics.

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;
- (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 resold and facilities-based local exchange service within the state of Nebraska.

Before the applicant is allowed to provide local exchange service and resold services to its end users:

- (a) The applicant, either through negotiation or adoption, must reach interconnection agreements with Qwest, Citizens, ALLTEL and/or Sprint.
- (b) The Commission must approve the interconnection agreements; and
- (c) Applicant must file, and the Commission must approve, a tariff in accordance with the provisions of § 002.21 of Neb. Admin. R. & Regs. Title 291, Chapter 5.

As a provider of facilities-based local exchange service in the state of Nebraska, the applicant should 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 the 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-2522 be and is hereby granted.

IT IS FURTHER ORDERED that upon final approval of the interconnection agreements and tariff, applicant is granted

authority to provide local exchange services in the geographic areas served by Qwest, Citizens, Sprint and ALLTEL.

IT IS FURTHER ORDERED that applicant shall 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 local exchange carriers except those obligations imposed on ILECs pursuant to Section 251(c) of the Act.

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 this 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 telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses and taxes.

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 and defined in Neb. Admin. R. & Reg. Title 291, Chapter 5, § 001.01B, the applicant shall collect from its subscribers a 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 hereby is made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide local exchange service within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION
COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director