

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2527
of NexGen Integrated Communica-)
tions, L.C. of Urbandale, Iowa,)
seeking to obtain a certificate) GRANTED
of authority to provide local)
exchange and interexchange)
telecommunications services)
within the state of Nebraska.) Entered: August 7,
2001

APPEARANCES:

For the Applicant:

Loel Brooks
Brooks, Pansing Brooks, P.C.
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Lincoln, Nebraska 68501

For the Commission:

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BY THE COMMISSION:

By its application May 4, 2001, NexGen Integrated Communications, L.C. (NexGen or Applicant) seeks authority to provide local exchange and interexchange telecommunications services within the territories serviced by Qwest Corporation. Notice of the application appeared in The Daily Record, Omaha, Nebraska, on May 7, 2001. A hearing on the application was held June 27, 2001, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, the applicant produced one witness, Tom Stewart, executive vice president and general counsel of NexGen Integrated Communications, L.C., who testified as follows:

NexGen Integrated Communications L.C. is a limited liability company organized under the laws of the state of Iowa, qualified to do business in Nebraska as a foreign corporation. NexGen was founded in February of 2000, and is based out of Des Moines, Iowa.

The applicant also has facilities in Sioux City, Council Bluffs, Cedar Falls, Waterloo, Iowa City, Cedar Rapids and Dubuque. NexGen was granted permission to operate as a competitive local exchange carrier (CLEC) in the state of Iowa on August 8, 2000.

NexGen currently has an interconnection agreement with Qwest Communication in the state of Iowa.

Mr. Stewart testified that NexGen's only shareholder, Mr. Josh Reel is also the president and CEO. Mr. Reel has been in the telecommunications business for more than ten years. Prior to acquiring NexGen, he has owned two different telecommunication companies, one of which he still owns.

NexGen proposes to provide data transmission to small and medium size businesses including Internet data services, voice, and video services. NexGen has entered into an agreement with a company by the name of NewPath Holdings Inc. (NewPath). NewPath is a CLEC currently authorized to transact business in Nebraska and Iowa. NewPath has recently filed for Chapter 11 bankruptcy protection and NexGen has entered into an agreement to purchase their assets. This would include NewPath's Omaha facilities and customers. Currently, NexGen is in negotiations with Qwest for an interconnection agreement that is contingent on NexGen receiving CLEC authority in the state of Nebraska. It is NexGen's intention only to service areas in the Qwest territory at this time.

In support of NexGen's application, Mr. Stewart testified that NexGen possesses the needed financial, technical and managerial capabilities to provide service in Nebraska and plans to use customer service as a major selling point of their services. As previously mentioned, NexGen was formed on February 21, 2000, and, therefore, does not have certified annual financial statements for the last three years. However, Exhibit F to the application describes NexGen's most recent financial statements and annual report which demonstrate NexGen has the financial ability to provision the proposed operations in Nebraska. Exhibit E to the application supplemented Mr. Stewart's testimony with respect to the applicant's managerial and technical capacity to provide the proposed service in Nebraska. In addition to the telecommunications experience and background of the president, Mr. Reel, NexGen has also supplemented its managerial team with key personnel once employed by NewPath. NexGen's management staff possesses more than forty years of combined experience in the telecommunications industry.

According to Mr. Stewart, approval of NexGen's application would serve the public interest because NexGen will decrease the potential for interruption due to NewPath's exit from the marketplace and because it will provide consumers with alternative choice with competitive prices.

Upon questions posed by the Commission, Mr. Stewart testified that NexGen has never been denied a certificate for authority in any state. In addition, NexGen has not been the subject of any formal complaints in any state.

Mr. Stewart further confirmed that NexGen will comply with all Commission rules pertaining to operator services, E-911, relay system for the deaf and slamming. NexGen will have a toll-free number available for customer inquiries and complaints. No advance deposits will be required of its customers.

No further evidence was adduced 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 territory. No evidence was submitted or 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 or in any manner diminish the exemptions and protections created by the Federal Telecommunications Act of 1996 for rural carriers, as defined

by the Federal Act. This order does not address the issue of the rural local exchange carriers' exemption under the Federal Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Federal Act.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2527 should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2527 be, and it is hereby, granted and NexGen Integrated Communications, L.C. is authorized to provide local exchange and interexchange services in the territories currently serviced by Qwest Corporation.

IT IS FURTHER ORDERED that the applicant file an additional application requesting expanded authority if or when the applicant desires to provide local exchange service in territories other than those of Qwest.

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 - 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. 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 7th day of August, 2001.

NEBRASKA PUBLIC SERVICE
COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director