

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3149
of ACN Communications, Inc. of)
Farmington Hills, Michigan)
seeking to expand existing)
authority to include competitive) GRANTED
facilities-based local exchange)
services within the state of)
Nebraska.) Entered: April 14, 2004

BY THE COMMISSION:

On March 2, 2004 ACN Communications, Inc. (ACN or Applicant) of Farmington Hills, Michigan, filed an application seeking to expand existing authority to include competitive facilities-based local exchange services within the state of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 4, 2004. No protests were filed; therefore, this application is processed pursuant to the Commission's Rule of Modified Procedure.

E V I D E N C E

ACN is a wholly-owned subsidiary of American Communications Network, Inc. (ACN, Inc.), organized under the laws of the state of Michigan and is authorized to conduct business in Nebraska by the Secretary of State. ACN was granted authority by this Commission, on February 29, 2000, pursuant to Application No. C-2203, to operate as an interexchange carrier of telecommunications services.

ACN proposes to provide competitive facilities-based local exchange services via an unbundled network element platform (UNE-P) and on a resale basis. ACN intends to primarily market residential customers and provide local exchange services, long distance services, and select custom calling features. Additionally, access to emergency call services (e.g., 911), directory assistance, operator-assisted services, and other ancillary services will be provided. Initially, ACN plans to offer services utilizing incumbent local exchange carrier (ILEC) facilities. ACN intends initially to provide service in Qwest territory, but seeks authority to also offer service in those areas served by GTE, United Telephone, d/b/a Sprint, and ALLTEL in Nebraska.

In addition, ACN requests that the Commission grant it a waiver of those regulatory requirements which are routinely granted to or not applicable to competitive facilities-based local service providers. They also seek an exemption from record-keeping regulations that require a carrier to maintain

its financial records in conformance with the Uniform System of Accounts (USOA) developed by the Federal Communications Commission (FCC) as a means of regulating telecommunications companies subject to rate based regulation.

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 Federal Telecommunications Act of 1996 (Act).

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide interexchange and 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 nor 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 interexchange or 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 interexchange and 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.

The Commission declines to grant Applicant a general "waiver of regulatory requirements that are routinely granted to or not applicable to competitive facilities-based local service providers" as requested. However, Applicant may seek a waiver for any specific regulatory requirement by filing an application requesting such waiver.

Likewise, the Commission denies Applicant's request for a general exemption from record-keeping regulations established by the FCC. Section 002.24B of the Neb. Admin. R. & Regs. Title 291, ch. 5 requires that for "purposes of accounting to the Commission, each exchange carrier shall keep its books and records in accordance with the appropriate uniform system of accounts in conformance with the latest FCC rules." While the current FCC rules exempt competitive facilities-based local

service providers from using USOA, if the FCC were to change its requirements, Applicant would be required to conform to FCC regulations.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-3149 be, and hereby is, granted and ACN Communication Services, Inc., is authorized to operate as a local exchange and interexchange carrier of 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 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 before commencing service in Nebraska that the Applicant file a tariff with the Commission as required by state statutes and the Commission's regulations.

IT IS FURTHER ORDERED that Applicants request for a general waiver of regulatory requirements routinely granted and exemption from FCC accounting regulations be denied.

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 interexchange and local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of April 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director