

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3316
of Dark Fiber Solutions, LLC,)
Plainfield, New Jersey seeking a)
Certificate of Public) Granted
Convenience and Necessity to)
Provide Local Exchange)
Telecommunications Services in) Entered: March 8, 2005
the State of Nebraska.

BY THE COMMISSION:

By its application filed December 6, 2005, Dark Fiber Solutions, L.L.C. of Plainfield, New Jersey, (Applicant or DFS) seeks authority to provide resold and facilities-based local exchange telecommunications services in the state of Nebraska. Notice of the application was published in the Daily Record, Omaha, Nebraska, on December 8, 2005. On January 5, 2005, Interventions were filed by Timothy Claire, of Rembolt Ludtke LLP on behalf of Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Curtis Telephone Company; Diller Telephone Company; Glenwood Telephone Membership Corporation; Hartman Telephone Exchanges, Inc.; Westel Systems f/k/a Hooper Telephone Company; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company; and Wauneta Telephone Company (Intervenors). A Stipulation was filed by the Applicant and the Intervenors on March 2, 2005.

E V I D E N C E

In the application, Applicant states that it is a limited liability company organized under the laws of the state of New Jersey and is authorized to transact business in the state of Nebraska. The Applicant was granted authority to provide InterLATA interexchange telecommunication services in the state of Nebraska pursuant to Commission Order entered on May 14, 2002 in regard to Application No. C-2711. The Applicant's sole member is Radiant Communications Corporation (Radiant), a New Jersey Corporation, which is a manufacturer of fiber-optic components for voice, video and data over fiber optic cables domestically and internationally.

The Applicant also stated in its application that it currently transacts business in the states of Nebraska, Illinois, Connecticut and Iowa. In Illinois, Connecticut and Iowa, the Applicant provides private wide area network services. The applicant has not applied for authority to provide telecommunications services in any state other than Nebraska. The Applicant further stated that it has no formal complaint or

other investigatory or enforcement proceedings involving the business operations of the Applicant or any of its officers, directors or members having a membership interest of five percent (5%) or more in voting securities of the Applicant within the last two (2) years.

The application stated that the Applicant seeks authority to provide facilities-based competitive local exchange and interexchange telecommunications services to customers throughout the state of Nebraska. Upon certification, Applicant intends to provide service via reliable, well-known and understood traditional time division multiplexed circuit switched technology targeted to both the residential and small business market. Applicant will offer the full traditional public switched telephone Network quality and services such as Enhanced 911, directory assistance, operator services, directory listing, local number portability and access to the Telecommunications Relay Service. Call forwarding, call waiting and caller ID will also be offered. Voicemail will be available to subscribers for an additional, optional charge.

The Applicant also stated in its application that it possesses the technical and managerial resources and qualifications necessary to provide the proposed services in the state of Nebraska. In Exhibit 3 attached to its application, the Applicant provided details regarding its managerial experience and its technical competency.

Exhibit 4 to the application is Radiant's Consolidated Balance Sheet for the years 2000 through 2004. Exhibit 4 also contains Radiant's Consolidated Balance Sheet and Consolidated Statement of Operations, as of June 30, 2004. The Applicant states through the Applicant's own resources and the resources of Radiant, it has sufficient cash flow and access to capital to conduct telecommunications operations in the state of Nebraska.

The Applicant agrees to comply with all statutes, local laws and regulations concerning the provisions of directory assistance, operator assistance services, Emergency 911 services and the collection of surcharges required by the statewide Telecommunications Relay Service. The applicant further agrees to remit said proceeds of the surcharges to the Commission no later than thirty (30) days after the end of the month in which they are paid. Additionally, the Applicant agrees to adhere to all state laws and all Commission policies, rules and orders.

The application states that the Applicant will serve the public interest of Nebraskans by providing competitive services which will stimulate other telecommunications providers to

better their operations, services and prices. The Applicant further claims that it will provide Nebraskans new technologies, services, increased efficiencies and cost savings. The Applicant states that its entry will have no negative impact and will preserve and advance universal service, protect the public safety and welfare, ensure the continuous quality services in Nebraska and will safeguard the rights of Nebraska consumers. The Applicant also states that its entry will promote the national policies of the Telecommunications Act of 1996 and will advance the objectives of the Commission set forth in its Progression Order dated December 19, 1995, in Application No. C-1128 relating to the implementation of local exchange competition.

On March 2, 2005, the Commission staff received a Stipulation signed by the Applicant's and the Intervenor's counsel on February 17, 2005. The Stipulation sought to limit the Applicant's service area. The Applicant and Intervenor jointly request this Order include the language agreed to in Exhibit A of the Stipulation which states the following:

Applicant is granted authority to provide local exchange services throughout the state of Nebraska in areas served by an incumbent local exchange carrier in Nebraska that is not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Applicant does not seek to provide service to customers in those small or rural territories at this time.

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. The Commission approves this application in accordance with the terms of the stipulation. Accordingly, Applicant is granted authority to provide local exchange services throughout the state of Nebraska in areas served by the an incumbent local exchange carrier in Nebraska that is not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Applicant does not seek to provide service to customers in those small or rural territories at this time.

If Applicant desires to provide service those customers in the small or rural company territories which qualify for an exemption pursuant to Section 251(f)(1), Applicant must first make a subsequent application to the Commission to extend its certificate of authority to those areas.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide 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 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-3316 be, and hereby is, granted as amended by the above-referenced stipulation.

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. §§ 86-301

through 86-315 (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 FURTHER ORDERED that the Applicant is granted authority to provide local exchange services throughout the state of Nebraska in areas served by an incumbent local exchange carrier in Nebraska that is not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Applicant is not authorized to provide service to customers in those small or rural territories at this time.

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 8th day of
March, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director