

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3161
of Phonetec PCS, LLC, of)
Midland, Texas, for Authority to)
Operate as a Resale Common) GRANTED
Carrier of Telecommunications)
Services within the State of)
Nebraska.) Entered: May 4, 2004

BY THE COMMISSION:

On February 18, 2004, an application was filed by Phonetec PCS, LLC (Applicant) of Midland, Texas, seeking a certificate of authority to operate as a provider of resale competitive local exchange and exchange access services within the State of Nebraska. The required application fee was received on March 18, 2004. Notice of the application was published in The Daily Record, Omaha, Nebraska on March 19, 2004.

As no protests to the application were filed, this application is processed pursuant to the Commission's Rule of Modified Procedure.

EVIDENCE

Applicant is a Texas corporation with its principal place of business in Midland, Texas. Applicant is authorized to transact business as a foreign corporation in the State of Nebraska.

Applicant is a switch-based interexchange resale carrier and proposes to provide switched and dedicated-to-switched interexchange telecommunications services through other Nebraska certificated local exchange carriers. Applicant proposes to offer switched and dedicated access "1+" long distance telecommunications services suitable for voice and limited data applications along with prepaid calling cards, postpaid calling cards, toll-free service and directory assistance. Applicant does not intend to provide alternative operator services nor does it own or lease facilities in the state of Nebraska.

Applicant asserts that it has not been involved in any formal complaint or other investigatory or enforcement proceeding. Applicant further states that in no instance have any of its applications been denied or rejected.

The applicant states that it has the resources and ability to offer the proposed service. Applicant asserts that granting the application will serve the public interest in that its proposed intrastate telecommunications services are developed to

serve the long distance needs of subscribers who cannot otherwise realize similar cost savings through major carriers; that the increased traffic generated over existing carriers' communications facilities will improve the efficiency and reduce carriers' costs in providing services; its services will provide greater consumer choice; and local exchange carriers will realize greater access charge revenues through the increase in traffic utilizing local access.

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 services;
- 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 the proposed services. 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.

Before the applicant is allowed to provide resale 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 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 competitive 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 incumbent local exchange carriers 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-3161 be, and hereby is, granted and applicant, is authorized to operate as a resale common 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. §§ 86-302 through 86-314 (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 FINALLY ORDERED that this order be, and hereby, is made the Commission's official Certificate of Public Convenience and Necessity to the applicant to operate as a resale common carrier of telecommunications services within the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of May,
2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director