

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 ) ORDER VACATING EARLIER  
Operate as a Resale Common ) FINDINGS AND ISSUING NEW  
Carrier of Telecommunications ) CERTIFICATE OF PUBLIC  
Services within the State of ) CONVENIENCE AND NECESSITY  
Nebraska. )  
) Entered: May 18, 2004

BY THE COMMISSION:

O P I N I O N   A N D   F I N D I N G S

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 telecommunications 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.

No protest to the application was filed and the application was processed pursuant to the Commission's Rule of Modified Procedure. The Commission issued an order granting the Applicant authority to provide resold common carrier service on May 4, 2004. Subsequently, the Commission learned that it granted Applicant's request as a local exchange carrier rather than as an interexchange carrier. We, therefore, vacate the order entered in the above-captioned application on May 4, 2004, and enter our revised findings and conclusions granting Applicant a certificate of public convenience and necessity to provide interexchange telecommunications service only.

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.

Interexchange reseller applications are subject to Commission jurisdiction under Neb. Rev. Stat. §§ 86-128 and 86-129 and Title 291 of the Commission's Rules and Regulations, Chapter 5, Rule 003.12. From examination of the application filed herein, the Commission finds Applicant has provided all the information required by the Commission, possesses adequate financial resources to provide the proposed service, and possesses adequate technical competency to provide the proposed service. The application should be granted.

#### 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 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 with the appropriate filing fee.

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, along with the appropriate fee.

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 18th day of  
May, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director