

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3383
of Diode Telecom, Inc., Diller,)
seeking authority to operate as)
a local exchange and) Approved
interexchange carrier of)
telecommunications services)
within the state of Nebraska.) Entered: May 11, 2005

BY THE COMMISSION:

On March 8, 2005, an application was filed by Diode Telecom, Inc. (Diode or Applicant) of Diller, Nebraska, seeking a certificate of authority to operate as a local exchange and interexchange carrier of telecommunications services within the State of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 11, 2005. 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

The Applicant states that it is a Nebraska corporation headquartered in Diller, Nebraska and is authorized by the Secretary of State to operate in Nebraska as a company under the name Diode Telecom, Inc. Further, the Applicant states that Diode Cable Company, Diller, Nebraska, owns 100% of the outstanding stock of the Applicant. Also, no officer, director, manager or shareholder having 5% or more of the Applicant's voting securities nor any of the Applicant's business operations have been involved in a formal complaint or other investigatory or enforcement proceeding.

In its Application, the Applicant continues that it does not contract business in any other state other than Nebraska and has not applied for local exchange or interexchange authority in any other state other than Nebraska. Initially, the Applicant proposes to offer non-facilities based local service to residences and businesses as well as switchless resold access and 1+ long distance telecommunications services suitable for voice and limited data application as a common carrier in the State of Nebraska. Additionally, the Applicant states that it does not propose to provide alternative operator services and does not intend to require advance payments; however, the Applicant may require deposits as referenced in the tariffs attached to the Application. The Application contains the Applicant's proposed local exchange tariff attached as Exhibit 2, and the interexchange tariff is attached as Exhibit 3.

The Applicant requests statewide authorization to provide local exchange service. Initially, the Applicant intends to provide local exchange services in the territories currently served by Alltel and Qwest as a reseller. Additionally, the Applicant intends to provide resold interexchange carrier services on a statewide basis originating at points throughout the state. The Applicant intends to resell the services of its underlying carriers initially. However, the Applicant wishes to reserve the right to lease or purchase its own facilities to provide services in Nebraska if economically feasible. The Applicant intends to resell the interexchange services of a number of authorized interexchange carriers under agreements yet to be negotiated.

The Application states that Diode Cable Company is the sole shareholder of Diode Telecom, Inc. Diller Telephone Company is the sole shareholder of Diode Cable Company. Diller Telephone Company has been providing local telecommunications services in Nebraska since its formation as a rural telephone provider in 1899. The Applicant states that Diller Telephone will provide technical and managerial leadership as well as support to the Applicant. The Applicant will be managed by Rob Barie, formerly of Alltel Communications, who has over 13 years of experience in telephone operations, sales, marketing and human resources. Additionally, other Diller Telephone employees with over 18 years of service will be involved in providing technical and operational support to the Applicant.

The Applicant states that its corporation has only been recently formed to provide service and does not have a three year history of financial statements. Further, the Applicant states that it will rely for financial support on Diode Cable Company's sole shareholder, Diller Telephone. Also, the Applicant asserts that it will be a reseller of telecommunications, and as such, its investment will be negligible. However, the Applicant states that it may, in the future, invest in components of its own network where justified; therefore, no breakeven analysis has been completed with regard to proposed services and estimated expenses.

The Application lists the services that it will provide through the resale of incumbent local exchange carrier or competitive local exchange carrier services. The services included would be the following: Voice grade access to public switched network; flat-rated local exchange service free of per-minute charges; dual tone multi-frequency signaling; access to 911 emergency services; access to operator services; access to interexchange services; access to directory assistance; access

to 711 Telecommunications Relay Service; and toll blocking. These services will be provided through the underlying facilities-based local exchange carrier.

The Applicant states that it agrees to adhere to all state laws and all Commission policies rules and orders. Further, the Applicant states that the approval of its Application will serve the public interest. The public interest will be served as the Applicant's proposed intrastate services are developed to serve the local exchange needs of subscribers who cannot otherwise realize similar cost savings through major carriers. Also, while providing its subscribers with cost advantages realized by the resale of communication facilities, the Applicant states that its service will utilize existing carrier communication facilities more efficiently and provide greater revenue for facilities based local exchange carriers. Additionally, the Applicant states that approval of the application will bring long-term benefits to the public by bringing greater value to subscribers through lower-priced, better quality services; innovative telecommunications services; increases in consumer choice in telecommunications services and alternative billing options; efficient use of existing telecommunications resources as well as increased diversification and reliability in the supply of telecommunications services; and additional access revenues to local exchange providers.

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 incumbent local exchange carriers (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-3383 be, and hereby is, granted and Diode Telecom, Inc. is authorized to operate as a local exchange and interexchange carrier of telecommunications services within the State of Nebraska in the requested service territories.

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, together 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 and pay appropriate filing fees 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 provide interexchange and local exchange telecommunications services in the state of Nebraska in the requested service territories set forth herein.

MADE AND ENTERED at Lincoln, Nebraska, this 11th day of May, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lawrence Johnson

Ann E. Bayle

Frank E. Landis

Chairman

Gerald L. Vap

ATTEST:

John B. James

Deputy Director

//s// Frank E. Landis

//s// Gerald L. Vap