

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-2492  
of Avera Communication LLC of )  
Sioux Falls, South Dakota, seeking ) GRANTED  
authority to provide local )  
exchange access, interexchange and )  
operator services. ) Entered: August 21, 2001

APPEARANCES:

For the Applicant:	For the Commission:
Don M. Patten, pro se	Shanicee Knutson
Executive Director	Wayne Bena
Avera Communication, L.L.C.	300 The Atrium, 1200 N Street
3900 West Avera Drive Suite 301	Lincoln, Nebraska 68508
Sioux Falls, South Dakota 57108	

BY THE COMMISSION:

By its application filed March 8, 2001, Avera Communication, LLC (Avera) of Sioux Falls, South Dakota, is seeking authority to provide local exchange access, interexchange and operator services. Notice of this application was published in The Daily Record, Omaha, Nebraska, on March 12, 2001, pursuant to the rules and regulations of this Commission relating to notice. No petitions for formal intervention were filed. A hearing on the Application was held on June 5, 2001, in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown above.

In support of its Application, the Applicant produced one witness, Don Patten, Executive Director of Avera, who testified as follows:

Avera is a wholly-owned subsidiary of Avera Health, which is an organization consisting of 125 hospitals and other health care facilities throughout the states of South Dakota, North Dakota, Minnesota, Iowa and Nebraska. Mr. Patten stated that the applicant mainly wishes to provide affordable bandwidth to the non-profit health care industry in the rural market that Avera serves.

Mr. Patten testified to the following information from questions posed by the Commission.

Mr. Patten testified that Avera has not begun any negotiations with any Nebraska carriers, however it is reviewing the existing interconnection agreements of Qwest and Citizens. Avera plans to have facilities in Nebraska upon receiving certification and plans to offer local exchange service, interLATA and intraLATA interexchange services and possibly high speed data transport.

Mr. Patten further testified that Avera is certified as a local and interexchange carrier in South Dakota, Minnesota and

Iowa. At no time has Avera been the subject of a formal complaint in any state.

Mr. Patten further testified that he has over 14 years of telecommunications experience covering all aspects from mobile radio to wireless service. Avera is partnered with SDN Communications. Avera will handle the administration of Avera Communication. The technical, switching and network aspects will be mainly handled by SDN through a contractual basis.

Mr. Patten further testified that Avera will provide operator, E-911 and 911 services. In addition, Avera will provide access to Nebraska's relay system for the deaf and will contribute to the Nebraska Universal Service Fund. Avera has policies in place to prevent slamming and will not use any pressure tactics or telemarketing to subscribe customers.

Mr. Patten further testified that they have contracted with Midwest Data, Inc. to provide billing services for Avera. In addition, Avera has three different toll-free numbers for questions, complaints and billing concerns.

Mr. Patten further testified that the Applicant possesses the needed technical, financial and managerial capabilities to provide telecommunications services in the state of Nebraska.

Mr. Patten further testified that the Applicant's application does not represent a bona fide request for interconnection with any rural carrier subject to the rural exemption.

No other parties introduced testimony or evidence at the hearing.

#### 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 proposed territories. No evidence was submitted or testimony elicited to suggest that the Applicant is not qualified to provide its proposed services in light of the criteria this Commission must consider.

This order does not terminate, waive or in any manner diminish the exemptions and protections created by the Federal Telecommunications Act of 1996 (the Act) for rural carriers, as defined by the Act. This order does not address the issue of the rural local exchange carriers' exemption under the Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Act.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2492 should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Commission that Application No. C-2492 be, and it is hereby, granted and Avera Communication LLC has authority to provide local exchange access, interexchange and operator services.

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 other 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 the Applicant provides access line service as referenced in the

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Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-1302 - 86-1306 (Relay Act) and defined in Neb. Admin. R. & Regs. tit. 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 Relay 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 FINALLY ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity to the Applicant to provide local exchange service within the authorized territories in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of August, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s// Frank E. Landis

  
Chairman

ATTEST:

  
Executive Director