

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. C-2551  
Mobius Communications Company, )  
Hemingford, seeking authority to ) GRANTED  
provide competitive local exchange )  
telecommunications services. ) Entered: August 7, 2001

BY THE COMMISSION:

By its application filed June 11, 2001, Mobius Communications Company (Applicant) of Hemingford, Nebraska, seeks authority through a combination of its own facilities, facilities leased from incumbent local exchange carriers and resold services to provide local exchange telecommunications services in the State of Nebraska. Notice of the application appeared in The Daily Record on June 13, 2001. No protests or petitions to intervene in the application were filed. Therefore, the Commission deems it reasonable and proper to proceed with the disposition of this application by its modified procedure in accordance with Rule 018.03 of the Rules of Commission Procedure.

E V I D E N C E

The application filed by the applicant in this matter, which was verified by Theron Jensen, the president of the applicant, provides the following facts in support of the grant of this application:

Applicant is a Nebraska corporation with its principal offices located at 523 Niobrara Street, P.O. Box 246, Hemingford, Nebraska 69348-0246. Applicant holds authority from this Commission to operate in this state as an intrastate interexchange intraLATA and interLATA telecommunications carrier, which authority was granted in Application No. C-2461 on January 23, 2001. Applicant is a wholly-owned subsidiary of The Hemingford Cooperative Telephone Company which is an incumbent local exchange carrier that currently provides communications services to approximately 1000 customers in Nebraska.

With the exception of the authorization as a resale long distance carrier issued by this Commission, applicant has not re-requested operating authority in any other state, and does not

transact business in any other states. There have been no formal regulatory complaints or other investigatory or enforcement proceedings involving the communications business operations of the applicant, any of its officers, directors or relating to the communications business operations of its sole shareholder.

Applicant proposes to focus on supplying digital subscriber line (ADSL) services to business and residential customers on a facilities and resold basis. As business and economic circumstances warrant, applicant also proposes to provide additional local exchange, access and dedicated transport services. Statewide authority to provide such services is requested, however, applicant initially proposes to offer the services in geographic areas served by Qwest Corporation and United Telephone Company of the West upon completion of interconnection and operational arrangements that will be negotiated in accordance with the Telecommunications Act of 1996 (the Act). At this time, applicant does not plan to provide services in the service areas of incumbent local exchange carriers that qualify for the rural exemption pursuant to Section 251(f) of the Act; nor does applicant intend to provide local exchange services in the area served by its parent corporation.

Applicant will draw on the management resources of its parent corporation and certain consultants for planning, marketing, network, service development, provisioning and delivery, and legal and regulatory assistance. Applicant and its parent corporation have prior experience in providing local exchange and interexchange telecommunications services in Nebraska.

Applicant has submitted its financial statements for the years ending December 31, 2000, 1999 and 1998 to the Commission under seal as a proprietary and confidential filing. Applicant believes that it has the requisite financial qualifications to provide the proposed services in the territory intended to be served.

Applicant states in its application that a grant of the application will be advantageous to Nebraska customers and is in the public interest. Specifically, the Nebraska Panhandle, which is the primary geographic area that applicant proposes to serve, will be benefitted by the provision of the proposed services in certain areas that service is not now available, and in other areas, by providing a choice of carriers in connection

with the provision of the services.

Applicant proposes to negotiate interconnection agreements with Qwest Corporation and United Telephone Company of the West as required for the conduct of its business. The services are expected to involve the resale of incumbent local exchange carrier (ILEC) unbundled network elements and resale of local exchange service pursuant to Commission-approved interconnection agreements and/or the use of facilities owned by the applicant.

Applicant will make such arrangements as may be required to provide operator services and directory assistance, 911 emergency services and Telecommunications Relay Service. The application states that applicant agrees to adhere to all laws of the state of Nebraska applicable to it, and to all Commission policies, rules and orders.

## 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.

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:

- (1) 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
- (2) 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, a tariff 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 will 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-2551 be, and hereby is, granted with the limitations set forth above.

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 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 through 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. Title 291, ch. 5, sec. 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 sur-charge, 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, if applicable; and (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission, if applicable. 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 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 as set forth above.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director