BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Action Communications, Inc. of Scottsbluff, Nebraska, seeking authority to obtain a Certificate of Public Convenience and Necessity to provide local exchange and interexchange telecommunications services in the state of Nebraska.	Application No. C-2606 GRANTED Entered: November 6, 2001

BY THE COMMISSION:

By its application filed September 24, 2001, Action Communications, Inc. (Action) of Scottsbluff, Nebraska, seeks authority to obtain a Certificate of Public Convenience and Necessity to provide local exchange and interexchange telecommunications services in the state of Nebraska. Notice of the application appeared in The Daily Record on September 26, 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 in the above docket averred as follows:

Action is a corporation organized and in good standing under the laws of the State of Nebraska. Applicant was originally incorporated under the name of Action Page of Nebraska, Inc. On August 29, 1994, Action Page of Nebraska, Inc., changed its name to Action Communications, Inc. Action is in good standing with the office of the Nebraska Secretary of State. Action has not applied for certification to provide telecommunications services in any state other than Nebraska. In addition, the applicant has not been the subject of any formal complaint or other investigatory or enforcement proceeding commenced within the last two years.

Action requests authority to provide all forms of local exchange service in the geographic territories served by Qwest Corporation and Sprint Communications Company L.P./United Telephone Company of the West, d/b/a/ Sprint. Action intends to focus on deploying digital subscriber line technology to provide high-speed data services to Nebraska communities. Initially as a data-only access provider, Action will not provide access to intraLATA or interLATA toll services, operator services, directory assistance, directory listings or emergency services. At such time as Action offers voice-related local exchange services, it will comply with all relevant state laws and regulations.

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Action plans to offer services through a combination of purchased and leased assets. Action intends to purchase or lease such assets from incumbent local exchange carriers, depending on the availability of facilities and the terms of service that Action is able to obtain from such carriers.

Action believes that the grant of the certificate requested in this application is in the public interest. In particular, the state's smaller communities will benefit directly through the provision of high-speed data services equal to those available in larger metropolitan areas. The public will benefit indirectly because the competitive presence of the applicant in Nebraska will increase the incentives for other telecommunications providers to operate more efficiently, offer more innovative services, reduce their prices and improve the quality of their service.

No other parties introduced testimony or evidence in this application

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 cri-

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teria 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 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 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 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-2606 be, and hereby is, granted and Action Communications, Inc. is authorized to provide local exchange

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service in the areas served by Qwest and Sprint and interexchange telecommunications services in the state of Nebraska.

IT IS FURTHER ORDERED that the applicant file an additional application requesting expanded authority if or when the applicant desires to provide local exchange service in territories other than those of Qwest and Sprint.

IT IS FURTHER ORDERED that the applicant comply with Section 251(f)(1)(B) of the Telecommunications Act of 1996 (the Act) 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. 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.

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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 provide interexchange in the state of Nebraska and local exchange telecommunications services in the areas served by Qwest and Sprint.

MADE AND ENTERED at Lincoln, Nebraska, this 6th day of November, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

//s//Frank E. Landis

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