

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-3224
Application of Acceris)
Communications Corporation,)
San Diego, California,)
seeking a certificate of)
authority to provide resold) GRANTED
and facilities-based/UNE-P)
local exchange)
telecommunications services)
within the state of Nebraska.) Entered: October 19, 2004

BY THE COMMISSION:

By application filed June 14, 2004, Acceris Communications Corporation (Acceris) of San Diego, California, seeks authority to provide resold and facilities-based/UNE-P local exchange telecommunications services within the state of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on June 17, 2004.

On July 16, 2004, a Petition for Formal Intervention was filed on behalf of the Rural Independent Companies. On August 19, 2004, a revision of Acceris' application was received by the Commission. The revision stated that Acceris seeks authority to provide local exchange service throughout the state of Nebraska in areas served by any local exchange carriers (LECs) that are not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Telecommunications Act of 1996 (the Act). Accordingly, the amendment restricted the application to the territory currently served by Qwest, ALLTEL, Sprint and Citizens.

On the basis of the revision received by the Commission, the Rural Independent Companies have informed the Commission that their objections may be considered withdrawn. This matter may now be processed pursuant to the Commission's Rule of Modified Procedure.

E V I D E N C E

Acceris is a privately-held Delaware corporation with its headquarters in San Diego, California. Acceris has been authorized by the Secretary of State to operate in Nebraska as a foreign company. In addition, no officer, director or shareholder having five percent or more of the applicant's

voting securities has been involved in a formal complaint or other investigatory or enforcement proceeding.

In the current application, Acceris seeks authority to offer local exchange telecommunications services to residential and small business subscribers throughout the state of Nebraska. At this time, Acceris will serve customers within the territories served by Qwest, Sprint, Citizens and Alltel. Acceris may decide to expand into the regions served by other incumbent local exchange carriers as market conditions warrant.

Acceris provides in its application that it possesses the requisite financial, managerial and technical expertise to provide the proposed services in the requested territory. Acceris further provides that approval of its application is in the public interest. Applicant was not proposing to require advance payments or deposits.

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' 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 right 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. 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 the application to provide local exchange service in the above-mentioned territories as amended by Acceris. In order for Acceris to provide telecommunications services in areas other than those served by Qwest, Sprint, Citizens and Alltel, applicant must first apply for and receive a certificate of convenience and necessity for those areas or file an application to expand the authority granted herein. 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, files its own tariff and receives 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 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 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-3224 be, and hereby is, granted and Acceris Communications Corporation is authorized to operate as a local exchange carrier of telecommunications services within the areas currently served by Qwest, Sprint, Citizens, ALLTEL.

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, restriction on joint marketing and quality of service), applicable to any other interexchange and local exchange carriers, except obligations imposed in 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, Chapter 5, Section 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 the 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.

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 local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 19th day of October, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

Chairman

Gerald L. Vap

Anne C. Boyle

ATTEST:

Frank E. Landis

Executive Director

//s// Frank E. Landis

//s// Gerald L. Vap