

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Talk America, ) Application No. C-3246  
Inc., New Hope, Pennsylvania, )  
seeking to amend its authority )  
to include the provision of ) GRANTED  
facilities-based and resold )  
local exchange services within )  
the State of Nebraska. ) Entered: September 21, 2004

BY THE COMMISSION:

On August 2, 2004, Talk America Inc. (Talk America) of New Hope, Pennsylvania, filed an application, seeking authority to amend its authority to include the provision of facilities-based and resold local exchange services within the State of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on September 4, 2004. 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

Talk America, a corporation organized under the laws of Pennsylvania, is a wholly-owned subsidiary of Talk America Holdings, Inc., a publicly-held corporation organized under the laws of Delaware. Talk America was authorized by this Commission to provide interexchange service on May 16, 1995, pursuant to Application No. C-1155.

Talk America requests authority to operate as a competitive local exchange carrier throughout the State of Nebraska. The Applicant plans to provide local exchange service by purchasing UNE-P and/or wholesale services from Qwest. Initial service offerings will feature basic local lines and associated features. Talk America has no plans at this time to construct facilities or install switching equipment. These services will be primarily provided to residential and small business customers.

## 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 Telecommunications Act of 1996 (hereinafter, the Act.)

Talk America 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 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:

- (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 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 (ILECs) pursuant to Section 251(c) of the Act.

Upon consideration of the application, the governing statutes and rules, and being fully informed, the Commission is of the opinion the application for a corporate change of name should be granted.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-3246 be, and it is hereby, granted and Talk America, Inc., is authorized to provide facilities-based and resold local exchange services within the State of Nebraska.

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.

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, 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 and local exchange telecommunications services in the state of Nebraska.

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MADE AND ENTERED at Lincoln, Nebraska, this 21st day of  
September, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Lowell Johnson*

*Anne C. Bueh*

*Frank E. Landis*

//s// Frank E. Landis

//s// Gerald L. Vap

Chairman

*Gerald L. Vap*

ATTEST:

*Ady Pollock*

Executive Director