

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3294
of Ernest Communication, Inc.,)
Norcross, Georgia, seeking)
authority to provide facilities-)
based and resold local exchange) GRANTED
service and resold interexchange)
service within the State of)
Nebraska.) Entered: December 14, 2004

BY THE COMMISSION:

On October 29, 2004, an application was filed by Ernest Communication, Inc. (Ernest) of Norcross, Georgia, seeking a certificate of authority to provide facilities-based and resold local exchange service and resold interexchange service within the State of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on November 1, 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

Ernest is a Georgia corporation headquartered in Norcross, Georgia. Ernest is authorized by the Secretary of State to operate in Nebraska as a foreign company under the name Ernest Communications, Inc.

Ernest proposes to offer basic local exchange and interexchange services to business and residential customers throughout Nebraska in all exchanges served by Qwest, GTE, United Telephone, d/b/a Sprint and Alltel through interconnection and resale arrangements with the incumbent local exchange carriers (ILECs.) Ernest will commence offering service upon the establishment of the appropriate interconnection and resale arrangements and deployment of its own facilities. Initially Ernest will provide service in the Qwest territory through unbundled network element platform (UNE-P).

Applicant's proposed telecommunication services will provide a competitive alternative to the public and promote competition and the efficient use of the local exchange and long distance telecommunication networks. Applicant contends that customers will benefit from greater choice and general improvements in price, features and options generated by competition and from having consolidated billing options and a single point of contact.

Local exchange carriers will realize greater access charge revenues due to increased traffic. Ernest's senior management has managerial expertise with regard to the telecommunications industry. Authorized to provide service in 24 states, none of Ernest's business operations have been the subject of formal complaint or other investigation.

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 Federal Telecommunications Act of 1996 (Act).

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria 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 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 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 (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-3294 be, and hereby is, granted and Ernest Communications, Inc. is authorized to operate as a reseller and facilities-based UNE-P common carrier of local exchange and interexchange carrier of telecommunications services within the State of Nebraska in the requested service territories.

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, together with the appropriate filing fee.

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 and pay appropriate filing fees 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

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and Necessity to the applicant to provide interexchange and local exchange telecommunications services in the state of Nebraska in the requested service territories set forth herein.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of December, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Hansen

Chairman

Gerald L. Vap

Arnell C. Puffer

ATTEST:

A. B. Pollock

Loel Jansson

Executive Director

//s// Frank E. Landis

//s// Gerald L. Vap