

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-3388
of UCN, Inc., Bluffdale, Utah,)
seeking authority to operate as)
a local exchange carrier of) Approved
telecommunications services)
within the State of Nebraska.) Entered: May 4, 2005

BY THE COMMISSION:

By its application filed March 17, 2005, UCN, Inc., Bluffdale, Utah, (Applicant or UCN) seeks authority to operate as a local exchange carrier of telecommunications services with the state of Nebraska. Notice of the application was published in the Daily Record, Omaha, Nebraska, on March 23, 2005. No protests or interventions were filed; therefore, this application is processed in accordance with the Commission's Rule of Modified Procedure.

E V I D E N C E

The applicant is a privately held corporation, organized under the laws of the state of Delaware. Its principal place of business is Bluffdale, Utah. It has been incorporated as such since March 15, 1999. The applicant provided a copy of its Certificate of Authority from the Nebraska Secretary of State to operate as a foreign corporation.

The applicant also states that it is a telecommunications company that offers a wide range of long distance, toll free, data transmission, and related communication service options as competitive prices, and provides to its customers a standard of service it believes is comparable to other industry participants. Currently, the applicants assert that it provides resold switched and dedicated long distance to business and residential consumers in Nebraska pursuant to authority granted by the Commission in Application C-1812 operating under the name Buyers United, Inc. In June, 2004, UCN changed its name from Buyers United, Inc., d/b/a buyersonline, d/b/a United Carrier Network to UCN, Inc. Authorization for said name change was granted by the Commission in Application C-3260 on October 6, 2004.

In its application, the applicant seeks additional authority to allow the company to offer existing and prospective customers resold and/or facilities-based competitive local exchange telecommunications services. Applicant seeks to provide this authority to provide these services in the state of Nebraska in the zones and exchanges of Qwest and other

competitively open incumbent local exchange carriers ("non-rural" ILEC's). The resold and facilities-based local exchange services the applicant proposes to offer include business class local loop connectivity and transmission, including 2-wire, 4-wire, DS-0, DS-1, DS-3 and OCn local loops necessary to connect customers to the applicant's nearest point of presence (POP). These services will initially be provided through commercial resale agreements with facilities-based competitive suppliers, such as AT&T, MCI and Level 3. Initially, as the applicant will provide local service as a reseller, it will rely solely upon the underlying suppliers for maintenance of the facilities used to provide resold local services. Applicant reserves the ability to resell or lease network elements from Qwest and other non-rural ILEC's in the future, as the market for its services dictates.

The applicant additionally offers the following: switched long distance service to business and residential customers; dedicated access long distance service; toll-free services; dedicated data transmission; private line data services; calling card services; conference calling; automatic call distribution; interactive voice response; outbound dialing and voice message broadcasting; fax to email; voice mail; and real time account management. Additionally, the application states that the applicant offers said services individually or in a suite of services tailored to a customer's needs. Further, the applicant asserts that, during 2003, UCN acquired and integrated into its operations a voice over internet protocol network (VoIP Network) that enables the applicant to offer a number of services in the form of software solutions delivered through out the VoIP Network.

The applicant provided a comprehensive list of its operations and technical staff in its application. To that end, the applicant provided the technical and managerial experience of Mike Shelton, Chief Technical Officer of the applicant. The applicant also asserted in its application that it has the overall technical experience needed to provide the services for which it is applied. Further, the applicant listed in its application all shareholders having a beneficial interest in 5 percent or more of the applicant's voting securities. Additionally, the applicant listed the 46 states and the District of Columbia in which it has approval to provide resold interexchange services. As well, the applicant listed the 15 states in which it has received approval to provide resold and facilities-based local service. Also, the applicant stated that it currently has applications pending to provide resold and facilities based local service in 26 states and the District of Columbia. In its application, the applicant also stated that it

has not been denied local or long distance certification in any state in which it has applied.

The application stated that no officer, director or shareholder having 5 percent or more of the applicant's voting securities have been involved in a formal complaint or other investigatory or enforcement proceeding. A description and explanation of investigatory/regulatory enforcement proceedings in which the applicant has been involved is attached to the application as Attachment 1. The applicant also stated that it does not propose to require advanced payments or deposits.

The applicant provided with its application a copy of its independently-prepared financial statements for its last three full years of operation, 2001, 2002 and 2003. These statements appear as Exhibit 4 attached to the application. Further, attached to the application as Exhibit 5, is a copy of the applicant's 2003 Annual Report to Shareholders.

The application stated that the Commission's granting of the application is in support of the public interest. The applicant stated that its proposed telecommunications services are developed to service the needs of subscribers who cannot otherwise realize similar cost savings through existing local carriers. Also, it stated that the public will benefit from greater consumer choice created through the broadening of innovative telecommunications service alternatives and ongoing affordable rates maintained by the additional competitive pressure placed on other competitors. Additionally, the applicant stated that through its application that it has the ability to provide end-users and customers in Nebraska with a viable and economical alternative telecommunications service.

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 proposed service territory. Applicant is granted authority to provide local exchange services throughout Nebraska except in areas served by incumbent local exchange carriers eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. By this application, applicant does not seek to provide service to customers in the rural incumbent territories.

If Applicant desires to provide service those customers in the small or rural company territories which qualify for an exemption pursuant to Section 251(f)(1), Applicant must first make a subsequent application to the Commission to extend its certificate of authority to those areas.

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 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 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-3388 be, and hereby is, granted as provided herein.

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. §§ 86-301 through 86-315 (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

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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 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.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of May, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lawrence J. Johnson
Ann C. Buege
Red Johnson

Chairman

Gerald L. Vap

ATTEST:

John Burstein
Deputy Director

//s// Frank E. Landis

//s// Gerald L. Vap