

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Comtel Telcom ) Application No. C-3506  
Assets LP , Boston, )  
Massachusetts, seeking approval )  
of Certification of Public )  
convenience and Necessity to )  
provide facilities-based and )  
resold local exchange and ) GRANTED  
exchange access as well as )  
interexchange )  
telecommunications services in )  
the state of Nebraska. )  
Entered: March 14, 2006

BY THE COMMISSION:

By its application filed November 22, 2005, Comtel Telcom Assets LP (Comtel or Applicant), Boston, Massachusetts, seeks a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange, exchange access, and interexchange telecommunications services within the state of Nebraska. Notice of the application was published in the Daily Record, Omaha, Nebraska on November 30, 2005, and again was published as amended on January 17, 2006. No Protests or Petitions of Formal Intervention were filed; therefore this application is processed pursuant to the Commission's Rule of Modified Procedure.

O P I N I O N   A N D   F I N D I N G S

Applicant is a privately held limited partnership organized under the laws of the state of Texas. Applicant does not currently provide telecommunications services in any state. Applicant intends to provide local exchange, interexchange and resold wireless services upon Commission approval and upon consummation of a transaction in which Comtel will acquire substantially all of the telecommunications assets from VarTec Telecom, Inc., Excel Telecommunications, Inc. and VarTec Solutions, Inc. (collectively referred to as "the VarTec Companies"). Applicant was authorized by the Federal Communications Commission to provide interstate and international interexchange services from locations within and throughout the United States. Applicant is currently applying for authority to operate in approximately 30 other states.

Applicant has not been subject to a formal complaint or other investigatory or enforcement proceeding involving its business operations.

Applicant seeks authority to provide telecommunications service to subscribers throughout Nebraska. Applicant initially plans to provide local exchange service to customers in the exchange areas of Qwest. Applicant currently does not plan to provide local exchange service in areas of Nebraska that are served by small or rural local exchange carriers as defined in the Telecommunications Act of 1996.

Although initially, Applicant may provide facilities-based local exchange services to residential customers only, Applicant requests authority to provide the full range of local exchange services to permit flexibility in its services offerings. Applicant's services will be available 24 hours a day, seven days a week. Applicant's local exchange services may include but will not be limited to basic residential and business local exchange services (flat rate, measured rate service, operator access, etc.), residential and business customer and class features (call waiting, caller ID, call forwarding, etc.), residential and business ancillary services (911, directory assistance), private line services, data transmission services, and exchange access services. Applicant does not initially intend to collect deposits or advanced payments for services offered.

Applicant states it possesses the technical and managerial resources necessary to provide the proposed services in the state of Nebraska. In support of this assertion, Applicant filed Exhibit C, which contains a description of its executive management team. In Exhibit D, which was filed under seal with the application, Applicant provided details of its financial competency to provide the proposed service.

Applicant states a grant of this application will serve the public interest as it will enhance competition leading to benefits for Nebraska consumers. Applicant states a grant will result in choice for consumer and better rates as a result of increased competitive pressures on the rates charged for services.

## 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 interexchange and local exchange services in the state of Nebraska. No party in this proceeding refuted 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 services 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.

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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 interexchange and local exchange services 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.

If the Applicant collects deposits or requires advanced payments of its customers for telecommunications services offered, it must notify the Commission and file such provisions in its tariff. The Commission may require Applicant to post a performance bond at that time.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application C-3506 be, and hereby is, granted.

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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 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 within 30 days from the entry of this order 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 and Necessity to the Applicant to provide interexchange and local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 14th day of March, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Harold J. Upp*

*Anne C. Baugh*

*Lowell C. Johnson*  
Chairman

ATTEST:

*And S Pollak*

Executive Director

//s// Lowell C. Johnson

//s// Frank E. Landis