

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ) Application No. C-3551  
Application of LMDS Holdings, )  
Inc., Reston, Virginia, )  
seeking authority to provide )  
competitive local exchange and ) GRANTED  
interexchange )  
telecommunications services in )  
the state of Nebraska. ) Entered: April 4, 2006

BY THE COMMISSION:

By its application filed February 14, 2006, LDMS Holdings, Inc. (Applicant or LMDS), Reston, Virginia, seeks authority to operate as a facilities-based local exchange carrier and interexchange carrier of telecommunications services within the state of Nebraska. Notice of the application was published in the Daily Record, Omaha, Nebraska, on February 16, 2006. Petitions of Formal Intervention were timely filed by Arapahoe Telephone Company d/b/a ATC Communications, Benkelman Telephone Company, Inc., Cozad Telephone Company, Curtis Telephone Company, Glenwood Telephone Membership Corporation, Hartman Telephone Exchanges, Inc., WestTel Systems f/k/a Hooper Telephone Company, Keystone-Arthur Telephone Company, Mainstay Communications, Plainview Telephone Company, and Wauneta Telephone Company (Intervenors). All intervenors have entered into a stipulation with Applicant; therefore this application is processed pursuant to the Commission's Rule of Modified Procedure.

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

Applicant is a wholly owned subsidiary of XO Communications, Inc. (XO), a publicly traded Delaware corporation. Applicant is incorporated under Delaware law and is authorized to transact business in the state of Nebraska. Applicant has been authorized to provide local and interexchange services in the District of Columbia, Maryland, Massachusetts, New York, and Washington. Neither Applicant nor its domestic member shareholders have been the subject of any formal complaints or other investigatory proceedings.

Applicant seeks authority to provide facilities-based and resold local exchange and interexchange

telecommunications services in the state of Nebraska. Applicant plans to initially offer dedicated point-to-point transport and data services to enterprise customers and other common carriers. LMDS may expand its service offerings at a later date to include a broader range of products and services. Applicant will bill all of its end users directly. Applicant does not intend to utilize a billing agent in issuing bills for services rendered to end users. LMDS has a toll-free number for billing and customer service related issues.

Applicant will provide its data-only broadband managed network solutions primarily through a combination of traditional wireline elements and its FCC-licensed, Local Multipoint Distribution Service ("LMDS") spectrum. The company will provide high-capacity access alternatives to the exclusive use of existing copper and fiber optic based telecommunications services. The Applicant's primary services will include Ethernet service and dedicated high speed Internet access.

LMDS does not initially intend to offer dialtone or voice grade services to end users. The Applicant requested a waiver from the Commission of the reporting and service requirements applicable to carriers offering voice grade or dialtone services, including the provision of E-911 services. The Commission finds that a waiver of those provisions is not appropriate, however, since the Applicant will not initially be offering such service, the provisions for reporting and service requirements for such services are not applicable at this time. We find that the Applicant shall inform the Commission if and when they begin offering dialtone or voice grade services to end users. Further, the Applicant shall and has agreed to comply with all rules and regulations governing the provisions of dialtone or voice grade service, if and when LMDS begins offering such services.

Exhibit G to the application is a copy of XO's Securities and Exchange Commission Form 10K for the calendar years 2004 and 2005. Applicant has attached projected financial statements contained in Exhibit F.

As a result of the stipulation entered into by Applicant and the Intervenors, Applicant has voluntarily restricted its application to provide local exchange services to areas served by an incumbent local exchange

carrier in Nebraska that is not eligible for a small or rural carrier exemption pursuant to Section 251(f)(1) of the Federal Act. Applicant does not seek to provide service to customers in those small or rural territories at this time.

Applicant states it possesses the necessary expertise and management team to serve its Nebraska customers. In Exhibit E, filed with the Applicant's application, Applicant provided profiles of its key executive and technical management.

Applicant states a grant of this application will serve the public interest because Applicant is well qualified to operate as such a service provider in Nebraska. Consumers of telecommunications services in Nebraska will receive the benefits of downward pressure on prices, increased choice, improved quality of service and customer responsiveness, innovative service offerings, and access to increasingly advanced telecommunications technology. The market incentives for new and existing providers of telecommunications services will be improved through an increase in the diversity of suppliers and competition within the local exchange and interexchange telecommunications market.

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 services in the state of Nebraska and local exchange services in the proposed territories. 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.

Before the Applicant is allowed to provide local exchange service to its users, it must either:

1. 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
2. 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

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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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-3551 be, and hereby is, granted.

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

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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 and pay appropriate filing fees with the Commission as required by state statutes and the Commission's regulations.

IT IS FURTHER ORDERED that the Applicant notify the Commission if and when they begin offering voice grade or dialtone service in Nebraska and upon the offering of such service Applicant shall comply with all rules and regulations governing the provisions of dialtone or voice grade service.

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 resold interexchange and resold local exchange telecommunications services in the state of Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of April, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Lowell C. Johnson*  
*Frank E. Landis*  
*Paul Johnson*

*Lowell C. Johnson*  
Chairman

ATTEST:

*Paul Johnson*

Executive Director

//s// Lowell C. Johnson  
//s// Frank E. Landis