

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

CP 1395

In the Matter of	)	
	)	
AIRNEX COMMUNICATIONS INC.	)	ORDER
	)	
Application for a Certificate of Authority to Provide	)	
Telecommunications Service in Oregon and	)	
Classification as a Competitive Provider.	)	

DISPOSITION: APPLICATION GRANTED

**Note:** By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

**INTRODUCTION**

Airnex Communications Inc. (Applicant) filed the application on January 28, 2008. Applicant requests authority to provide interexchange telecommunications service in Oregon as a competitive provider.

The Commission served notice of the application on February 6, 2008. The Commission did not receive any protests.

Based on the record in this matter, the Commission makes the following:

**FINDINGS AND CONCLUSIONS**

**The Proposed Operation**

Applicant will provide intrastate, interexchange, switched telecommunications service (toll) statewide in Oregon. Applicant indicates that it intends to resell the services of other certified carriers. Applicant did not indicate that it would operate as a facilities based provider. Applicant may purchase network elements and finished services for resale only from other certified carriers.

Applicant will not directly provide operator services as defined in OAR 860-032-0001. Applicant will not be an 'operator service provider' as defined in ORS 759.690(1)(d).

Applicant was previously granted authority to provide telecommunications service in Oregon on April 13, 1998, by Order No. 98-148, in docket CP 436. That authority was canceled April 31, 2001, by Order No. 01-374, for noncompliance with Commission rules regarding providing requested information. Applicant did not request reconsideration but later filed and received a new certificate of authority after all delinquent reports and fees had been submitted. The second certificate of authority was granted on August 22, 2002, in docket CP 1074, Order No. 02-575. Again, CP 1074 was canceled on February 1, 2005, in Order No. 05-084, for failure to file OUS reports. Again, the applicant did not request reconsideration. Now, the applicant has filed this third application. Applicant is now current on all delinquent payments and reports and is now requesting the same authority granted in previous certificates. Applicant is reminded that as a condition of this order, it is required to comply with all Commission rules, fees and reporting requirements in a timely manner. Failure to comply with any Commission rule will result in its authority being canceled again. Additional requirements and consideration will apply should Applicant request authority after a third cancellation. It is not in the public interest to continue to grant authority to a provider who repeatedly ignores Commission rules.

### **Applicable Law**

ORS 759.020 governs Applicant's request to provide telecommunications as a competitive provider. Under ORS 759.020(5), the Commission shall classify Applicant as a competitive provider if Applicant demonstrates that its services are subject to competition, or that its customers or those proposed to become customers have reasonably available alternatives. In making this determination, the Commission must consider the extent to which services are available from alternative providers that are functionally equivalent or substitutable at comparable rates, terms and conditions, existing economic or regulatory barriers to entry, and any other factors deemed relevant.

OAR 860-032-0015 authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the certificate holder fails to comply with the terms and conditions of the certificate.

### **Resolution**

**Existence of Alternatives.** AT&T, MCI, Sprint Communications Company, Qwest Corporation, Verizon Northwest Inc. and others provide toll and operator services in the service area requested by Applicant.

**Suitability of Alternatives.** Applicant's customers or those proposed to become customers have reasonably suitable alternatives to Applicant's services. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors.

**Barriers to Entry.** The level of competition in the market shows that both economic and regulatory barriers to entry are relatively low.

### **Conditions of the Certificate**

There are several conditions listed in the application. Oregon Administrative Rules relating to certificates of authority are generally included in OAR chapter 860, division 032. Conditions applicable to certificate holders include, but are not limited to, the following: OARs 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0020, 860-032-0060, and 860-032-0090. The conditions listed in the application and those contained in Oregon Administrative Rules are adopted and made conditions of this certificate of authority. A condition of this certificate of authority is that Applicant shall comply with applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon. Further, Applicant shall comply with the following conditions:

1. Applicant shall not take any action that impairs the ability of other certified telecommunications service providers to meet service standards specified by the Commission.
2. Applicant shall comply with all conditions listed in the application.
3. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310 and 756.320 and OAR 860-032-0095. The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1.
4. Applicant shall make quarterly contributions to the Oregon Universal Service fund based on a Commission approved schedule and surcharge percentage assessed on all retail intrastate telecommunications services sold in Oregon, pursuant to ORS 759.425. If Applicant bills the surcharge to its end-users, Applicant shall show the charges as a separate line item on the bill with the words "Oregon Universal Service Surcharge \_\_\_\_%".
5. If Applicant provides services to a subscriber who, in turn, resells the services, including operator services, then Applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0007.

### **Conclusions**

Applicant has met the requirements for a certificate to provide telecommunications service as a competitive provider. The application should be granted.

**ORDER**

IT IS ORDERED that:

1. The application of Airnex Communications Inc. for authority to provide interexchange switched (toll) telecommunications service is granted.
2. Applicant is designated as a competitive telecommunications provider.
3. Applicant may provide authorized services statewide in Oregon.
4. Applicant shall comply with conditions of the certificate.

Made, entered, and effective MAR 08 2008.



A handwritten signature in black ink, appearing to read "Lee Sparling", is written over a horizontal line.

**Lee Sparling**  
Director  
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480-183.484.