

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Applications of)

LINTEL SYSTEMS INC., Lincoln, Nebraska,)
for authority to provide WATS Resale)
Service.)

Application No. C-413

TEL-SHARE TELECOMMUNICATIONS SERVICE)
Omaha, Nebraska, for resale of WATS)
and Long Distance.)

Application No. C-416

EXECULINES, INC., Omaha, Nebraska, for)
authority to resell intrastate WATS)
line service.)

Application No. C-419

NATIONAL ECONO TEL, Denver, Colorado,)
for authority to resell long distance)
telecommunications service.)

Application No. C-420

AMERICAN COMMUNICATIONS OF NEBRASKA)
INC., Lincoln and Omaha, Nebraska, for)
authority to Resale Long Distance)
Telecommunications Services of other)
Common Carriers.)

Application No. C-444

EXECULINES, INC., Omaha, Nebraska, for)
authority to Resell Intrastate WATS)
Line Service.)

Application No. C-446

DENIED

Entered: April 10, 1984

APPEARANCES: For the Applicant, LinTel Systems Inc.
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Suite 1200, American Charter Center
Lincoln, Nebraska 68508

For the Applicant, Execulines, Inc.
Donald H. Erickson
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Omaha, Nebraska 68114

For Intervenor, AT&T Communications of the
Midwest, Inc.
W. Richard Morris 10825 Old Mill Road
Omaha, Nebraska 68154

For Intervenor, General Telephone Company of the
Midwest
William H. Keating
11 Eleventh Avenue
Grinnell, Iowa 50112

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application Nos. C-413, C-416,
C-419, C-420, C-444 and C-446

Page two

For the Intervenor, Great Plains Communications, Inc.
Wyman E. Nelson
1645 Front Street
Blair, Nebraska 68008

For Intervenor, The Hamilton Telephone Company
Larry G. Carstenson
P.O. Box 167
Aurora, Nebraska 68818

For Intervenor, The Lincoln Telephone and
Telegraph Company
Paul M. Schudel
1500 American Charter Center
Lincoln, Nebraska 68508

For Intervenor, Northwestern Bell Telephone
Company
Richard L. Johnson
100 South 19th Street
Omaha, Nebraska 68102

BY THE COMMISSION:

By the Applications respectively filed on June 16, 1983, June 20, 1983, June 28, 1983, July 7, 1983, September 28, 1983 and September 29, 1983, each of the above-referenced Applicants seek authority to resell intrastate WATS and long distance telecommunications services within the State of Nebraska.

Notice of the filing of each Application was published in the Daily Record, Omaha, Nebraska, pursuant to the Rules and Regulations of this Commission pertaining to notice. Subsequently, the Commission sent a letter of notification to all interested parties advising that the Applications had been filed and the extent of authorization sought by each Applicant. Further, the Secretary of the Commission sent a letter by first class mail to all parties interested in this proceeding giving them notice of the hearing on this matter. Leave to intervene was sought by each of the six intervenors listed above and was granted by the Commission.

Pursuant to the aforementioned notices, hearing was held on these Applications on March 12, 1984 in the Commission Hearing Room, 301 Centennial Mall South, Lincoln, Nebraska, with appearances as shown above. Applicants Tel-Share Telecommunications and National Econo Tel were not represented by counsel at the hearing but representatives of each provided a statement to the Commission. No counsel or representative of Applicant, American Communications of Nebraska, Inc. appeared to offer any evidence. In addition to the Applicants, all other parties to this matter were afforded the opportunity to present evidence and members of the public were similarly given the opportunity to testify.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application Nos. C-413, C-416,
C-419, C-420, C-444 and C-446

Page three

OPINION AND FINDINGS

1. All parties to this matter were in agreement, and the Commission finds that consideration of these Applications should proceed under section 75-604 of the Nebraska Revised Statutes, as amended. The text of that statute states:

No person, firm, partnership, corporation, cooperative, or association shall offer telephone service or shall construct a new telephone line in or extend an existing telephone line into the territory of another telephone company without first making an application for and receiving from the Commission a Certificate of Convenience and Necessity, after due notice and hearing under the Rules and Regulations of the Commission. Before granting a Certificate of Convenience and Necessity, the Commission must find that (1) the territory in which the applicant proposes to offer telephone service is not receiving reasonably adequate telephone service, (2) that the portion of the territory of another telephone company in which or into which the applicant proposes to construct new lines or extend its existing lines is not and will not within a reasonable time receive reasonably adequate telephone service from the telephone company already serving the territory, or (3) the application is agreeable to the subscriber or subscribers and to both telephone companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party or parties requiring telephone service.

2. Applicant, American Communications of Nebraska, Inc., having failed to appear and offer any evidence before this Commission, the Commission finds that said Applicant has failed to satisfy the requirements of section 75-604 and that said Application should be denied.

3. The remaining Applicants are each currently involved in the provision of telecommunications services to members of the public in Nebraska consisting of the resale of interstate WATS and long distance telecommunications services, with each Applicant providing such services to businesses and residents of Omaha, Nebraska; and with National Econo Tel and LinTel Systems Inc. also providing such services to businesses and residents in Lincoln, Nebraska.

4. The Intervenors are currently certificated common carriers authorized to provide telecommunications services in their respective service areas within the State of Nebraska in accordance with Certificates of Convenience and Necessity which have been granted by this Commission, and are subject to the jurisdiction of this Commission in providing these services.

5. Ted Sonderegger testified on behalf of Applicant, LinTel Systems Inc., describing the equipment used by said Applicant in its current provision of interstate WATS resale services, the location of the subscribers served at the present time, the intent of LinTel Systems Inc. to become a total communications company to the end user in the areas which it serves and the need of said Applicant for authorization to resell WATS services within the State of Nebraska so that it can offer a "total" package of services to its customers.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application Nos. C-413, C-416,
C-419, C-420, C-444 and C-446

Page four

6. Tom Evans testified on behalf of Applicant, Tel-Share Telecommunications Service, stating that his company currently serves customers located in Des Moines, Iowa and Omaha, Nebraska providing resale of interstate WATS and long distance services. Mr. Evans testified that the services which his company provides are different or "value added" services as compared to existing telephone companies which result in stimulation of WATS usage. He testified that 24% of his customer base were formerly users of long distance services from Northwestern Bell Telephone Company, the certificated company serving Omaha, Nebraska.

7. Donald R. Leath testified on behalf of Applicant, Execulines, Inc., stating that his Company sought service for Omaha and Fremont only and that the nature of services provided by his Company were nearly identical to those described by the other Applicants in this matter. He further testified that based upon his experience with providing service to Fremont, Nebraska, the use of foreign exchange lines in connection with the provision of such service had proven to be unworkable due to the costs involved. Mr. Leath testified that a number of persons had expressed interest to obtain intrastate WATS service from his Company, and concluded his testimony by stating that his Company would not enter an area served by an existing telephone company without its prior consent.

8. John Novak testified on behalf of Applicant, National Econo Tel, stating that his Company which is based in Denver, Colorado, is currently providing WATS resale on an interstate basis to residents in Lincoln and Omaha, Nebraska and that the services which his Company was providing were essentially equivalent to those described by the other Applicants. Mr. Novak testified that his Company felt that in order to establish its service in a given area it required a population base of at least 100,000 people. He stated that his Company did not intend to use foreign exchange lines to provide its resale services. Much of Mr. Novak's testimony related to policy considerations relating to establishment of competition in the telecommunications industry in Nebraska.

9. While the Applicants individually, and as a group, testified that authorization of intrastate WATS resale would provide the public with additional choices of companies offering long distance telecommunication services, no evidence was offered to support a finding by this Commission that from a technological or service standpoint the telecommunications services currently offered by existing certificated telephone companies is not reasonably adequate or that such services would not within a reasonable time be reasonably adequate.

10. Based upon the testimony of the Applicants, taken as a whole, and upon late filed Exhibit 4, the Commission finds that the resale of intrastate WATS such as these Applicants propose, would result in a loss of traffic and revenue to existing certificated carriers. While in-depth studies were not offered in evidence as to the extent of such diversion of revenue, the Commission is of the opinion and finds that such diversion of revenue is contrary to and inconsistent with the legislative policy of the State of Nebraska as expressed in section 75-604, which is designed to foster sound economic conditions and to avoid destructive competition in the telecommunications industry in Nebraska.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application Nos. C-413, C-416,
C-419, C-420, C-444 and C-446

Page five

11. Counsel for Execulines, Inc. stated to the Commission that within the context of section 75-604 (3) the application of Execulines, Inc. to provide intrastate WATS resale services in Fremont and Omaha, Nebraska was agreeable to the existing certificated telephone company, Northwestern Bell Telephone Company. Counsel for Northwestern Bell confirmed this agreement. Notwithstanding such agreement, and based upon the evidence offered at the hearing, the Commission finds that authorization of intrastate WATS resale will create a duplication of facilities both among resellers, i.e. each of the Applicants that appeared testified they were serving Omaha, Nebraska with essentially the same equipment and providing essentially the same services; and duplication with existing certificated telephone companies. For the reasons stated in the preceding paragraph and based upon the above-mentioned duplication of facilities, this Commission finds that granting these Applications would not foster sound economic conditions within the telecommunications industry in accordance with established legislative policy of this State. Therefore, this Commission finds that even in the presence of agreement between the companies involved, authorization of intrastate WATS resale would not be in the public interest.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application Nos. C-413, C-416, C-419, C-420, C-444 and C-446 be and hereby are denied.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of April, 1984.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold D. Simpson

Chairman

COMMISSIONERS CONCURRING:

ATTEST:

Terrence L. Kubicek

Executive Secretary

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION