

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)	Application No. C-625
LinTel Systems Inc., Lincoln, Nebraska,))	
for a Certificate of Public Convenience))	GRANTED
and Necessity to provide Intrastate)	
InterLATA Telecommunications Service.)	Entered: March 11, 1986

APPEARANCES: For the applicant
Paul M. Schudel, Attorney
1500 American Charter Center
Lincoln, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By application filed December 6, 1985, Lintel Systems, Inc., Lincoln, Nebraska, seeks a Certificate of Public Convenience and Necessity authorizing it to provide telephone service in the State of Nebraska.

Notice of the filing of the application was published on December 11, 1986, pursuant to the provisions of the Commission's Rules and Regulations.

No protests to the granting of the application were filed. A Petition of Formal Intervention was filed by AT&T Communications of the Midwest, Inc. on December 31, 1985, however, such Petition was withdrawn by said Intervenor.

Pursuant to Rule 018.03 of the Rules of Commission Procedure, Applicant has filed its Motion that this application be processed administratively by the use of affidavits.

Upon consideration of the Affidavit of James W. Strand, Applicant's president, and upon consideration of the application and the attachments thereto, the Commission is of the opinion and finds that:

1. Applicant, LinTel Systems, Inc. is a corporation duly organized and existing under the laws of the State of Nebraska. It is a subsidiary of Lincoln Telecommunications Company which is also located in Lincoln, Nebraska. Applicant is currently engaged in providing interexchange telecommunications services on an interstate basis and is involved in the sale of business communications systems.

2. The application seeks the issuance of a Certificate of Public Convenience and Necessity to provide intrastate interLATA long-distance service through WATS resale and facility-based services, and further seeks the approval of tariffs as well as regulation consistent with the Commission's orders entered in Applications No. C-497 and C-552.

3. The State of Nebraska has been divided in to three Local Access and Transport Areas (LATAS) pursuant to the terms of the Modified Final Judgment (MFJ) entered in United States v. American Telephone & Telegraph Co., 552 F.Supp. 131 (D. D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983) and United States V. American Telephone & Telegraph Co., 569

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F.Supp. 990 (D. D.D. 1983), aff'd sub nom., California v. United States 460 U.S. 1001 (1983). Under the terms of the MFJ, AT&T Communications is allowed to provide telecommunications services between LATAS while the Bell Operating Companies such as Northwestern Bell are restricted to providing services only within such LATAS.

4. The Commission is governed by the provisions of Section 75-604, Revised Statutes of Nebraska, in granting certificates of public convenience and necessity. Such Section states:

"Telephone lines; construction; extension into territory served by another telephone company; certificate of convenience and necessity; application; notice; hearing; findings required. No person, firm, partnership, corporation, cooperative, or association shall offer telephone service or shall construct a new telephone line or extend an existing 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."

5. While this statute, by its language, refers to local exchange service, in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb. 268, 142 N.W.2d 324 (1966), the Nebraska Supreme Court held that long distance service was also subject to its provisions.

6. The statutory language requires that the Commission make finding (1), finding (2) or finding (3). Thus, if any one of the conditions is met, the other findings are not required.

7. Since no protests to the application were filed and further, since AT&T Communications of the Midwest, Inc. has withdrawn its Petition of Formal Intervention, there exists no opposition to this Application.

9. While no public witnesses testified either for or against this application, testimony in other hearings before this Commission concerning establishment of competitive intrastate interLATA telecommunications services leaves little doubt that subscribers are using the services of the applicant for both interstate and intrastate calls.

9. The facilities of applicant now in place are providing interstate service. Applicant does not propose to construct facilities to be used only for intrastate service, thus, no existing facilities will be duplicated as a result of the granting of this application.

10. The Affidavit of James W. Strand, Applicant's President, establishes that applicant has been involved in the provision of interstate telecommunications services through resale of WATS since 1983, that Applicant has the technical, managerial and financial qualifications to provide the proposed intrastate interLATA services as outlined in the proposed tariff attached to its application as Exhibit F, that applicant currently serves approximately 2,000 business and residential customers, that applicant has switching facilities in Lincoln and Omaha, Nebraska, that applicant initially proposes to provide intrastate interLATA services in localities where it is currently providing originating interstate service but intends to expand its areas of originating service as rapidly as feasible on a state-wide basis and that applicant intends to use both WATS resale and facility-based services to provide the telecommunications services for which it seeks authority.

11. Having considered the aforementioned affidavit and the application as a whole, we find that the application is agreeable to the subscribers and to the telephone companies involved will not create a duplication of facilities and is in the public interest and the interest of the parties requiring service.

12. As part of its application, LinTel Systems Inc. has requested regulatory treatment consistent with that established by Order of this Commission dated August 5, 1985 and entered in Applications No. C-497 and C-552. Applicant's proposed tariff contains a range of rates which may be varied by applicant on one-day's notice to subscribers and the Affidavit of James W. Strand contains an attachment setting forth the rates which applicant proposes to charge effective upon the approval of its application by this Commission.

13. Any certificated telecommunications common carrier furnishing interLATA service within this State may file with this Commission for its approval, tariffs containing a range of rates and charges for intrastate interLATA service furnished to Nebraska subscribers. The rates and charges may be varied by the company on one-day's notice to the Commission. The proposed tariff filed by LinTel Systems, Inc. should be approved.

14. This Commission has adopted the FCC Uniform System of Accounts for Class A and B telephone companies and its own uniform system of accounts for Class C and D telephone companies. We find that since the FCC has not required the so-called non-dominant carriers to adopt the Uniform System of Accounts, it is appropriate to allow such non-dominant companies, including applicant, to follow the same accounting methods as required by the FCC.

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15. Applicant should be required to file an annual report with this Commission consisting of a copy of any report filed by it with the FCC, a copy of the annual report to the stockholders, and for Nebraska on a combined interstate intrastate basis, the investment in telephone plant located within this State, accumulated depreciation thereon, operating revenues, operating expenses and taxes.

16. A final matter to be considered is that of unauthorized intraLATA calls. For example, a call received by the system in Omaha and terminated in Norfolk may have actually originated in Des Moines, Iowa. With equal access (Feature Group D) no intraLATA calls would reach the interLATA carriers since such calls would be diverted by the local exchange carriers's facilities.

17. We recognize that unlawful intraLATA calls may be carried by interLATA carriers. These carriers should be required to compensate the local exchange company for revenues lost as a result of interLATA carriers handling such intraLATA traffic, or in the alternative, to block such calls. For billing purposes, it will be assumed that a call entering or exiting an interLATA carrier's network entirely within a LATA are intraLATA calls for which the local exchange carrier is entitled to be compensated.

18. In order to compensate the local exchange companies for any revenues lost, applicant shall be required to file with the Commission reports on a monthly basis showing the number of messages carried by it solely within a LATA in this state. Such monthly reports shall be filed with the Commission within sixty days from the last day of each month. Applicant shall then compensate Northwestern Bell and LT&T for intraLATA messages carried during a month by paying to Northwestern Bell and LT&T for each such message carried the respective company's average intraLATA toll revenue per message for that month, less applicable access charges incurred.

19. As modified herein, the application is fair and reasonable, is in the public interest and should be granted.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-625 be and it is hereby granted and that LinTel Systems, Inc. be and it is hereby authorized to provide intrastate interLATA communications services in the State of Nebraska.

IT IS FURTHER ORDERED that this Order be and it is hereby made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide intrastate interLATA service through the use of WATS resale and facility-based services.

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IT IS FURTHER ORDERED that the proposed tariff of LinTel Systems Inc. is approved.

IT IS FURTHER ORDERED that applicant shall file in accordance with applicable statutes, an annual report with this Commission consisting of: (1) a copy of any report filed with the FCC, (2) the annual report to stockholders, and (3) for the State of Nebraska, on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the State, accumulated depreciated thereon, operating revenues, operating expenses and taxes.

MADE AND ENTERED at Lincoln, Nebraska, this 11th day of March, 1986.

NEBRASKA PUBLIC SERVICE COMMISSION

Eric Rasmussen

Vice Chairman

ATTEST:

Donald Adams

Executive Secretary

COMMISSIONERS CONCURRING:

Duane D. Gay

Duane D. Gay

James F. Munnely

Eric Rasmussen

Harold D. Simpson