

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the application of) Application No. C-706
Dial-Net, Inc., Sioux Falls,)
South Dakota, for a Certificate of)
Public Convenience and Necessity to) GRANTED
Provide InterLATA Interexchange Tele-)
communications Services within the)
State of Nebraska.) Entered: February 10, 1987

BY THE COMMISSION:

OPINION AND FINDINGS

By its application filed December 18, 1986, Dial-Net, Inc., Sioux Falls, South Dakota, seeks a Certificate of Public Convenience and Necessity authorizing it to provide InterLATA interexchange telecommunications services within the State of Nebraska.

Notice of the filing of the application was published on December 22, 1986, pursuant to the provisions of the Commission's Rules and Regulations. No protests to the granting of the application were filed.

Pursuant to Rule 018.3 of the Rules of Commission Procedure, on the Commission's own motion, this application has been processed administratively by the use of affidavits.

Upon consideration of the affidavit of John Dennis, Applicant's President, and upon consideration of the application and the attachments thereto, the Commission is of the opinion and finds that:

1. Applicant is a privately-held corporation with its principal place of business at 101 South Phillips Street, Suite 107, Sioux Falls, South Dakota. Dial-Net, Inc. currently provides long distance service to approximately 10,000 residential and business customers in over 100 communities in South Dakota.
2. The applicant seeks the issuance of a Certificate of Public Convenience and Necessity to provide intrastate interLATA interexchange telecommunications service through resale of Wide Area Telephone Service (WATS), Message Toll Service (MTS) and Private Line Service.
3. The State of Nebraska has been divided into 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 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, there exists no opposition to this Application.

8. 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 John Dennis, Applicant's President, and the application filed, establish that Applicant has been involved in the provision of interstate telecommunications services through the resale of services since 1985, that Applicant has the technical, managerial, and financial qualifications to provide the proposed intrastate interLATA services, that Applicant currently serves approximately 10,000 business and residential customers in South Dakota, that Applicant initially proposes to provide intrastate interLATA services to customers in over 50 western Nebraska cities located in LATA 646, (area code 308), using its switch located in Grand Island, Nebraska, and that Applicant intends to provide the telecommunications services for which it seeks authority through resale of WATS, MTS, and private line service.

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, Dial-Net, 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.

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 rates filed by Dial-Net, Inc., should be approved. Applicant should file a tariff incorporating these approved rates.

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.

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. This Commission has approved tariffs of the exchange carriers for access service which contain differentials for Feature Groups A and B versus Feature Groups C and D. In Application Nos. C-497 and C-552, the Commission found that a 25% discount for Feature Groups A and B was appropriate for intrastate interLATA access.

17. 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-706 be and it is hereby granted and that Dial-Net, 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 resale of WATS, MTS and private line services.

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IT IS FURTHER ORDERED that the proposed rates of Dial-Net, Inc., be and they are hereby approved.

IT IS FURTHER ORDERED that applicant file a tariff with the Commission incorporating the approved rate schedule.

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 10th day of February, 1987.

NEBRASKA PUBLIC SERVICE COMMISSION

Eric Rasmussen

Chairman

ATTEST:

Donald P. ...

Executive Secretary

COMMISSIONERS CONCURRING:

//s//Duane Gay

//s//James F. Munnelly

//s//Eric Rasmussen

//s//Harold Simpson

//s//Dan Urwiller