

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of application of) Application No. C-770
Telesphere Network, Inc., Oakbrook)
Terrace, Illinois for authority) DENIED
to operate as a reseller of)
telecommunications services within)
the State of Nebraska.) Entered: October 31, 1989

OPINION AND FINDINGS

BY THE COMMISSION:

By its application filed March 20, 1989, Telesphere Network, Inc., (Telesphere) Oakbrook Terrace, Illinois seeks authority to operate as a reseller of telecommunications services within the State of Nebraska.

Notice of the filing of the application was published pursuant to the provision of the Commission's Rules and Regulations. No protest to the application was filed.

Pursuant to notice required by law, public hearing was held on the application on August 15, 1989. Late filed exhibits were received on September 15, 1989. On October 23, 1989, applicant moved to reopen the record to admit additional exhibits. Upon consideration of applicant's motion, the Commission denied the motion on October 24, 1989.

Upon consideration of the application, the evidence adduced at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Applicant is a Delaware corporation with its principal place of business at Two Mid America Plaza, Suite 500, Oakbrook Terrace, Illinois 60181. It is a wholly owned subsidiary of Telesphere International, Inc.
2. Applicant seeks a Certificate of Public Convenience and Necessity to furnish intrastate telecommunications service as a common carrier both interLATA and intraLATA. Applicant proposed to resell the telecommunications service of other carriers.
3. Jack Pace, Senior Attorney testified for applicant: Telesphere presently provides primarily switched service on an interstate basis reselling the facilities of other carriers; Its customers are billed through their local exchange carrier; Telesphere plans to offer the same service within the State of Nebraska that it provides on an interstate basis including message telecommunications service, switched and special access WATS service and operator services. Mr. Pace presented 10 exhibits including a letter to operator service customers, a description of a transaction resulting in change of control of

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the applicant and financial statement for 1988 and the first quarter of 1989.

4. A review of Telesphere's financial exhibits reveals that it experienced net losses of \$1,638,000 in 1985, \$21,651,000 in 1986, \$1,291,000 in 1987, \$28,071,000 in 1988 and \$2,693,000 in the first quarter of 1989. As of March 31, 1989, its total stockholders' equity is a deficit of \$10,812,000. Current liabilities exceeded current assets in both the December 31, 1988 statement and that of March 31, 1989, although the ratio improved from .38 to .51.

5. In 1988, Telesphere's revenues from 900 services and operator services exceeded its revenue from network services by a margin of two to one. This represented a substantial increase in revenue from these services while revenue from network services declined 31% over 1987. Uncollectible accounts also rose to 10.1% of revenue in 1988.

6. Applicant has entered into a purchase agreement with FG Ventures a newly organized corporation owned by Francesco Galesi which provides for the issuance by applicant to FG Ventures of \$15 million principal amount of debentures due 1999 bearing interest at 14% per annum. The debentures are convertible into capital stock of Telesphere and, if fully converted, will result in FG Ventures assuming controlling interest.

7. For the three months ended March 31, 1989, applicant used \$6,605,000 in its operations. Receivables increased \$8,600,000 during the period as a result of increased revenues. The company realized \$10,800,000 in proceeds from the sale of debentures in the first quarter, which along with a reduction in cash on hand, was used to offset the cost of operations.

8. Applicant currently has four customers in Nebraska. Mr. Pace testified that Telesphere plans no marketing effort in Nebraska and will have no employees in Nebraska.

9. Based upon the evidence of operating losses, deficit in net assets, negative operating ratio, and the sale of controlling interest to finance continued operations; the Commission finds that applicant does not possess the necessary financial resources to provide the proposed service and the application should be denied.

ORDERED

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-770 be and it is hereby denied.

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MADE AND ENTERED at Lincoln, Nebraska this 31st day of October, 1989.

NEBRASKA PUBLIC SERVICE COMMISSION

Daniel G. Urwiller
Chairman

COMMISSIONERS CONCURRING:

Duane D. Gay
//s//Frank E. Landis, Jr.
//s//James Munnelly
//s//Eric Rasmussen
//s//Daniel G. Urwiller

ATTEST:

[Signature]
Executive Director

The record in this matter contains ample financial information to deny Telesphere's Application.

In my opinion, however, the record is not complete. Applicant's Motion to Reopen the Record and Admit Additional Exhibits should have been granted. The most current financial information in the record is an unaudited, first-quarter financial report ending March 31, 1989. After the hearing was closed, the Applicant attempted to offer, according to the Motion, "recently published financial information which Telesphere believes is critical to the Commission's deliberations..."

Whether examination of the proffered exhibits would have resulted in a different outcome for the applicant, is unknown. What is known is the fact that the Application was not protested. No one would have been prejudiced by reopening the record; and, there was no rational basis to hurry this proceeding to its conclusion.

"Recently published financial information" goes directly to the heart of the Application and should, as a matter of fairness to the Applicant, been examined.

Commissioner Frank E. Landis

I concur on the Order but respectfully dissent on whether to grant the motion to reopen the hearing for additional evidence. I believe, that because this was an untested application, there would have been no harm to include additional evidence which was relevant to the application and not available at the time of the hearing. In addition, the applicant stated in its motion that it believed the staff had requested some of the information in late filed exhibits.

However, I concur with the order denying the application because I feel the evidence did not adequately improve the financial fitness of the applicant and the ability of the applicant to abide by the Commission operator service rules was questionable.

Commissioner Eric C. Rasmussen