

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-902
Application of National Tele-)
phone Communications, Inc.,)
Newport Beach, California) GRANTED
which seeks authority to operate)
as a reseller of intrastate)
interexchange telecommunications)
services in Nebraska.) Entered: March 31, 1992

APPLICANT'S ATTORNEY

Cynthia D. Mullins Kott, Esq.
P.O. Box 6023
Station #1
Pompano Beach, FL 33060
(305) 764-5093

APPEARANCES

Terry Dasno, Director of Operations	Jeffrey P. Goltz, Esq.
National Telephone Communications	Legal Counsel, NPSC
18 Corporate Plaza	300 The Atrium
Newport Beach, CA 92660	1200 "N" St. Box 94927
(714) 640-7100	Lincoln, NE 68509
	(402) 471-3101

By application filed September 26, 1991, National Telephone Communications, Inc. ("NTC") seeks authority to provide intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. NTC's principal offices is:

National Telephone Communications, Inc.
18 Corporate Plaza
Newport Beach, California 92660

Applicant's registered agent is CT Corporation, the address of which is:

CT Corporation
Suite 1500
206 South 13th St.
Lincoln, NE 68508

Notice of the application was published in the Omaha *DAILY RECORD* September 30, 1991 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held January 14, 1992 in the Commission Hearing Room, Lincoln,

Nebraska with appearances as shown. The applicant's representative was asked to provide late-filed exhibits which were received February 27, 1992 and March 27, 1992.

O P I N I O N A N D F I N D I N G S

BY THE COMMISSION

Upon consideration¹ of the application, the governing statutes and rules¹, the evidence adduced at the hearing, and being fully informed in the premises, the Commission is of the opinion and finds:

Terry J. Dasno testified on behalf of the applicant. Dasno became NTC's Director of Operations upon it's incorporation in Nevada in 1988. NTC started operating in 1989 after receiving a certificate to do business in California.

Upon questioning by Commission counsel, Dasno testified the application also seeks authority to provide alternate operator services ("AOS"). The filed application, upon which the published notice was based, does not contain such a pleading. This Commission has consistently taken the position that a general application for authority to operate as a reseller does not include authority to conduct AOS. AOS must be petitioned for specifically in the application before we will consider it.² A grant of authority in this application does not, therefore, authorize AOS. NTC is, of course, free to make a future application for such authority.

Dasno has been involved in the long distance communications industry since 1983 and is basically the applicant's employee who handles technical, operational, and regulatory affairs for NTC. Dasno testified NTC's other technical support is supplied by a couple of other employees,

¹ Interexchange reseller applications are governed by Neb. Rev. Stat. §75-604 and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

² We observe that a late-filed amendment to add AOS to the application is an inadequate solution; the published notice of the application would not then accurately reflect the authority sought in the application. The Commission is not obligated, upon receipt of an application, to contact the applicant and determine what the applicant really meant. We will act only upon what the applicant requests in its petition.

but the applicant's personnel are really people whose backgrounds are in sales. Currently, the applicant has approximately 25,000 customers across the country who place in excess of 150,000 calls per month.

NTC is a publicly traded company, the major stockholder of which is its president, Don Rackemann who holds approximately forty percent of the stock. NTC is not a subsidiary corporation, nor under control of any holding company. NTC owns stock in Fircrest Corporation of Vancouver, Canada; likewise, Fircrest owns stock in NTC.

NTC has no customers in Nebraska pending the application's approval. No state commission has rejected an application by NTC for reseller authority, nor has a formal complaint been filed against it. The applicant operates in thirty six states currently. If the application is approved, NTC will provide service throughout Nebraska, but Omaha and Lincoln will probably be the main focus. There will be no equipment nor employees located within the state.

NTC provided a copy of its Securities and Exchange Commission *Form 10-Q* as a late-filed exhibit. The balance sheet shows total assets and liabilities as of September 30, 1991 to be \$1.927 million. The statement of operations lists a gross profit margin of \$1.448 million on revenues of \$3.99 million worth of business. After deducting costs and expenses, NTC was left with a net profit of \$181,492.

No other state regulatory agency has required the applicant to procure a performance bond. Dasno testified NTC does not require deposits or advance payments. The applicant is now "piggybacked" onto a company called Telnet of Phoenix, Arizona which resells Sprint at volume discounts. Dasno testified that the applicant will be under direct contract with Sprint and MCI to provide resale of those underlying carriers in Nebraska.

Tariff Provisions-

1. NTC's Message Toll Service provides facilities to complete intrastate calls between two points. From service areas to interLATA and intraLATA points in Nebraska the applicant's proposed rates are (all zero minus traffic to be routed to the local exchange carrier):

1ST 30 SECONDS				ADD'L SIX SECONDS		
Mileage	Day	Eve.	N/W	Day	Eve.	N/W
0 - 10	.07295	.04933	.03595	.01459	.00987	.00719
11 - 22	.10395	.06995	.05145	.02079	.01399	.01029
23 - 55	.12595	.07695	.06295	.02519	.01539	.01259
56 - 124	.15095	.09745	.07845	.03019	.01949	.01569
125 - 292	.16495	.10745	.08695	.03299	.02149	.01739
293 +	.17345	.11375	.08795	.03469	.02275	.01759

* Rates are in Cents per Minute, rounded and billed in six second increments.

Business Day: 8AM - 5PM**, Monday - Friday

Evening: 5PM - 11PM**, Sunday - Friday

Night/Evening: 11PM - 8AM**, Monday-Friday, All Day Saturday

8AM - 5PM**, Sunday

** To, but not including.

2. Travel Service

Travel Service provides facilities to complete intrastate calls between two points when the customer is away from his/her premises. The customer is assigned unique travel authorization code(s) which authorize the use of Travel Service by the customer.

From any point in Nebraska to point(s) in Nebraska, the rates are \$0.75 per call³ plus MTS rates listed in aforementioned section.

3. NTC 800 Service

800 Service provides facilities for business and residential customers to receive intrastate calls. The customer is assigned unique 800 Telephone Number(s) that, when dialed, are switched over the carrier's network and terminate at the customer's designated telephone number(s). All 800 business customers are billed in six second increments. Residential customers are billed in first thirty second and additional six second increments.

Sign-up fee per 800 number (one time): \$50.00

Monthly exclusive 800 number charge: \$17.00

The applicant has obtained customers in other states through use of "multi-level marketing" practices. Briefly, this is

³The proposed tariff mistakenly shows the price for this service is \$.075 per minute. The new tariff should reflect the correct price.

the use of independent sales people who recruit customers for NTC in return for commissions. The key to this practice is that Recruiter "Smith" also earns a percentage of the commission on each customer obtained by Recruiter "Jones" if "Jones" was brought by "Smith" into the fold, so to speak, as an independent sales representative for NTC. The just described hypothetical is a two level example. This process can reproduce itself for five or six levels with "Smith" obtaining a smaller and smaller percentage of each subsequent recruit of a recruit of a recruit, etc. Dasno testified that, although mentioned in the Securities and Exchange Commission Form 10Q, he is not "aware of any intent at this point in time to bring the multi-level program to Nebraska." (Transcript at pp.37.)

"Multi-level marketing" is an issue suited for the offices of the Attorney General should abuse occur. We observe, however, that an abusive use of this practice, *if it occurs* reflects on the fitness of an applicant possessing a reseller certificate. Therefore, this Commission takes the position that concurrent jurisdiction with the Attorney General exists.

The application should be granted, but we specifically refuse to rule on the request at the hearing for authority to conduct alternate operator services for the reasons expressed in footnote 2. The applicant may petition specifically for this authority at a later date if it desires.

The applicant's proposed tariff which is part of its application is in accordance with the Commission's rules and regulations. The tariff appears reasonable in light of the proposed service.

Based on the testimony, the exhibits, and the proposed tariff, the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-902 be, and it is hereby, granted as modified and National Telephone Communications, Inc. be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the State of Nebraska.*

IT IS FURTHER ORDERED that applicant shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the state of Nebraska on a combined interstate-intrastate basis, the investment in

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telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that applicant file an updated and corrected tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FURTHER ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity to furnish the service authorized herein.

MADE AND ENTERED at Lincoln, Nebraska this 31st day of March, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Duane D. Gay

//s//James F. Munnelly

//s//Eric Rasmussen

Eric Rasmussen

Acting Chairman

ATTEST:

W. R. Long
Executive Director