

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of)	Application No. C-920
NOS Communications, Inc.,)	
Bethesda, Maryland which seeks)	GRANTED
authority to operate as a)	AND
reseller of telecommunications)	PROTECTIVE ORDER ISSUED
services within the State of)	
Nebraska.)	Entered: June 9, 1992

APPEARANCES

For the Applicant

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PRELIMINARY MATTERS

By application filed February 19, 1992, NOS Communications, Inc., ("NOS ") Bethesda, Maryland seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. NOS's principal office and the location where its books and records are kept is 6707 Democracy Boulevard, Bethesda, Maryland. The applicant's registered agent is CSC Lawyers Incorporating Service Co., 1227 "J" Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha *DAILY RECORD* February 25, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held May 20, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown, Commissioner Gay chairing.

BY THE COMMISSION

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

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

Nebraska was divided into three Local Access Transport Areas (LATAs) as a result of the terms of the Modified Final Judgment issued in the AT&T divestiture case. *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.C. 1983) aff'd sub nom., *California v. United States*, 460 U.S. 1001 (1983). While Neb. Rev. Stat. §75-604, by its language, refers to local exchange service, the Nebraska Supreme Court in *Northwestern Bell Telephone v. Consolidated Telephone Co.*, 180 Neb. 268, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of the statute. This was recognized by the Nebraska Legislature in L.B. 835 because interexchange services (which includes resellers) in §86-805 are referenced to in §75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale in deciding reseller applications.

Larry B. Orlov, NOS's Executive Vice-President, testified. NOS was incorporated in Maryland November 15, 1989. NOS is a privately held, stand alone corporation, the corporate officers of which are Eugene Sandler, President, Richard Kay, and Orlov. The applicant employs 45 individuals full-time. Orlov testified the broad application for a certificate seeks both interLATA and intraLATA authority. The company currently has 12,000 subscribers.

The applicant proposes to operate as a non-facilities based reseller of AT&T long-distance service in Nebraska. No facilities in Nebraska are contemplated nor will any employees be located within this state. No state commission has rejected an NOS application for reseller authority, nor has a formal complaint been filed against it.

As of the hearing date, the applicant was certified to operate as an intrastate reseller in: Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon

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

and Texas; the applicant also operates in those states which do not require an intrastate certificate: Colorado, Michigan, Montana, Nevada, Ohio, Oklahoma, Pennsylvania, Tennessee, Utah, and Virginia.

The filed application, upon which the DAILY RECORD notice is based, *does not* seek a certificate to provide alternate operator service ("AOS"). We note this Commission has consistently held an application for reseller authority does not include² AOS unless specifically petitioned for in the application. At the hearing, NOS's financial statement, the certificate to do business as a foreign corporation in Nebraska, and a copy of NOS's articles of incorporation were provided. As part of the pleadings in the filed application, NOS moved that the financial information submitted be sealed pursuant to a protective order because of its confidential proprietary nature. At the hearing, NOS offered updated financial information (Exhibit 5) and renewed its motion. Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.01A establishes the Commission can provide safeguards for proprietary information.³ The Communications Department legal counsel did not object to a protective order in this instance. Therefore, we grant the applicant's motion and seal the financial records which are a part of this proceeding.

AT&T is the underlying carrier used by NOS at this time. The applicant resells AT&T's switched 1+ service, Software Defined Network (SDN) and Distributed Network Service (DNS). NOS also offers travel cards. To be profitable as a reseller, NOS charges its customers rates comparable to the underlying carrier's tariff rates for intrastate Nebraska calling. The difference between the rate paid by the customers and the discounts received from the underlying carrier provides the margin of profit.

The financial information provided by the applicant was compiled by an outside CPA firm. Orlov, relying on the documents filed with application, testified that for the period ending March 31, 1992, NOS has total current assets and stockholder's equity and liabilities of \$2.863 million. The liabili-

² We observe that a late-filed amendment to add AOS to the application is an inadequate solution; the previously published notice of the application would not then accurately reflect the authority sought in the application.

³ Rule 003.01A states: "The Commission shall maintain safeguards for the protection of proprietary information included, but not limited to, protective orders and limited distribution of the proprietary information."

ties themselves amount to \$220,000. As regards income, NOS generated net revenues for the fiscal year through March 31, 1992 of \$8.718 million and ended the period with a net income of \$2.475 million.

The applicant will target small and medium commercial businesses. The SDN and DNS products offered by AT&T cannot be used by residential subscribers. Applicant intends to concentrate in the Lincoln and Omaha markets but will provide service throughout the state if the customer base exists.

The tariff is uncomplicated and provides a subscriber with a distance sensitive usage plan for day, evening, and night/weekend time frames. There is a separate tariff rate for Specialized Resale/Rebiling services. Usage discounts are also available. As proposed, the tariff is in accordance with the Commission's rules and regulations and appears reasonable in light of the proposed service.

The facilities of the applicant now in place are providing interstate service. Applicant does not propose to construct facilities for use in intrastate service; therefore, no existing facilities will be duplicated if this application is granted for reseller service.⁴

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-920 be, and it is hereby, granted and NOS Communications, Inc., Bethesda, Maryland be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services in Nebraska.* The financial documents filed with this application are hereby sealed as proprietary information pursuant to a protective order as incorporated herein.

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

⁴See §75-604.

Application No. C-920

Page -5-

interstate-intrastate basis, the investment in 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 9th day of June, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel G. Unwiller
Duane D. Gay

//s//Frank E. Landis, Jr.
//s//James F. Munnelly

Frank Landis
Chairman

ATTEST:

John R. [Signature]
Executive Director