

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of) Application No. C-921
TELNET Communications, Inc.,)
Phoenix, Arizona, which seeks)
authority to operate as a) GRANTED
reseller of telecommunications)
services within the State of)
Nebraska.) Entered: June 2, 1992

APPEARANCES

For the Applicant

Kevin Narans, Pro Se
President and Chief Executive
Officer
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For the Communications Dept.

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PRELIMINARY MATTERS

By application filed February 20, 1992, TELNET Communications, Inc., Phoenix, Arizona ("TELNET") seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. TELNET's principal office and the location where its books and records are kept is noted above and its registered agent is the CT Corporation, 206 South 13th 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 5, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown, Commissioner Landis 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,

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. (Footnote Continued)

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.

Kevin Narans, the applicant's president, appeared. TELNET was incorporated in Oregon upon its inception in 1989. TELNET is a privately held, stand alone corporation, the corporate officers of which are Narans, Steven Tomsic and a Nevada corporation, Telnev. The applicant employs 22 individuals full-time. Narans testified the broad application for a certificate seeks both interLATA and intraLATA authority. The company currently has 3,000 subscribers who make approximately 800,000 calls per month.

The applicant proposes to operate as a non-facilities based reseller of AT&T and Sprint 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 a TELNET application for reseller authority, nor has a formal complaint been filed against it.

As of the hearing date, the applicant was operating as a reseller in the following states: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Kansas, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah,

(Footnote Continued)
5, Rule 003.12.

Vermont, Virginia, and Washington, as well as the District of Columbia.

At the hearing, TELNET's financial statement, the certificate to do business as a foreign corporation in Nebraska, and a copy of TELNET's articles of incorporation were provided.

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&T and Sprint are the underlying carriers used by TELNET at this time. The applicant resells Sprint's switched 1+ service. TELNET also offers travel cards, 800 service, and does a small amount of dedicated line service. Finally, TELNET offers resale of AT&T's Software Defined Network (SDN). To be profitable as a reseller, TELNET charges its customers rates comparable to the underlying carriers' tariff rates for intrastate Nebraska calling. The difference between the rate paid by the customers and the discounts received from the underlying carriers provides the margin of profit.

The applicant bills reseller customers under its own name and in-house. There are no intermediary billing agents involved. The applicant receives its call detail records on magnetic tape from the underlying carriers for processing its customer billing.

The financial information provided by the applicant was compiled by Blumenthal, Greene, Freed & Strassels, a certified CPA firm. Narans, relying on the documents filed with application, testified that for the period ending August 31, 1991, TELNET generated total sales of \$2.64 million and a gross profit of \$529,605. Net profit after expenses amounted to \$320,000. The company's net worth for the period was \$476,000 and stockholders' equity totaled \$383,000. Total assets equaled \$1.37 million. At the request of Commission counsel, TELNET subsequently filed updated financial information in the form of a late-filed exhibit. The update reflects the following: For the period ending December 31, 1991, TELNET had total sales of \$5.16 million and a gross profit of

²We 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.

\$904,000. Net profit after expenses totaled \$498,000. The company's net worth for the period was \$855,000 and stockholders' equity totaled \$561,000. Total assets equaled \$1.55 million.

The tariff provides several billing methodologies. One is a flat rate WATS service. Alternatively, a customer may use a distance sensitive plan on day, evening, night/weekend time frames. There is also a usage sensitive plan.

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.

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.³

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-921 be, and it is hereby, granted and TELNET Communications, Inc., Phoenix, Arizona be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services in 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 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.

³ See §75-604.

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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 2nd day of June, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Duane D. Gay

//s//Frank E. Landis, Jr.

//s//James F. Munnelly

//s//Eric Rasmussen

Frank Landis, Jr.
Chairman

ATTEST:

Pat R. By
Executive Director