

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of	)	Application No. C-924
Mid-Com Communications, Inc.,	)	
Seattle, Washington, which seeks	)	
authority to operate as a	)	GRANTED
reseller of interexchange tele-	)	
communications service within	)	
the State of Nebraska.	)	Entered: June 9, 1992

APPEARANCES

For the Applicant

Ashok Rao, Pro Se  
President and Chief Executive  
Officer  
1601 Fifth Avenue Suite 1000  
Seattle, WA 98101  
(206) 628-8000

For the Communications Dept.

Jeffrey P. Goltz, Esq.  
Legal Counsel, NPSC  
300 The Atrium Building  
1200 "N" St. Box 94927  
Lincoln, NE 68509  
(402) 471-3101

PRELIMINARY MATTERS

By application filed March 17, 1992, Mid-Com Communications, Inc., Seattle, Washington ("MCCI") seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. MCCI'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* March 19, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held May 8, 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 rules<sup>1</sup>, the evidence adduced at the hearing,

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<sup>1</sup>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 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 include 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.

Mr. Ashok Rao, the applicant's president and chief executive officer, appeared at the hearing. MCCI was incorporated in the state of Washington January 25, 1989 originally as Communications Discount, Inc. The company changed its name to Mid-Com Communications, Inc. November 9, 1990. MCCI is a privately held Subchapter S corporation, the corporate officers of which are Rao, Mark Goyette (Chief Operating Officer), Michael Rogala (Vice President of Sales), and Steven Geiger (Controller/Treasurer). The applicant has offices in New York, Tampa, Philadelphia, Chicago, and Los Angeles. The company employs 140 individuals. At the hearing, MCCI's financial statement, the certificate to do business as a foreign corporation in Nebraska, and a copy of MCCI's (and Communication Discount, Inc.'s) articles of incorporation were provided.

Rao testified and the pleadings clearly reflect the application seeks both interLATA and intraLATA authority. 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 include AOS unless specifically petitioned for in the application.<sup>2</sup>

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<sup>2</sup>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.

The applicant proposes to operate as a non-facilities based reseller of AT&T and Sprint long-distance service in Nebraska. The company currently has 8,000 subscribers who are billed approximately a billion minutes per year. No future facilities in Nebraska are contemplated nor will any employees be located within this state. The applicant resells switched Dial 1+ service. MCCI offers the 1+ service in a variety of ways including switched access outbound, dedicated access outbound, switched access inbound (including 800 service), dedicated access inbound (including 800 service), and calling card service. The applicant also offers operator services (operator toll service and directory assistance).<sup>3</sup> MCCI also resells AT&T's software defined network service (SDN).

To be profitable as a reseller, MCCI 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.

No state commission has rejected an MCCI 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: Arizona, California, Colorado, Florida, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New York, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and the District of Columbia.

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 the customer billing.

The financial information provided by the applicant was marked as Exhibits D and E and was compiled in-house by Steven Geiger, who is a CPA. Rao, relying on Exhibits D and E, testified that for the period ending December 31, 1991, MCCI generated total sales of \$9.051 million. \$1.6 million of this total was generated by the reseller portion of MCCI's business. \$7.45 million of the total sales were generated from consulting fees earned for structuring customers' underlying

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<sup>3</sup> Note that the operator services listed here are not alternate operator services. They are actually the operator services provided by the underlying carriers and passed through to the reseller's customers as part of the resold services.

carrier service. Rao testified the two services support each other financially. Total assets and shareholder's equity/liability amounted to \$2.12 million.

At the hearing, Rao offered updated financial information for the period ending March 31, 1992 (Exhibit J). The update reflects the following: for the quarter, MCCI had total revenue of \$3.52 million and total income of \$2.35 million. Resale revenue amounted to \$1.68 million and net profit after expenses for the quarter totaled \$119,000.

The tariff differentiates between Infinity and Infinity Plus products. Infinity is based on AT&T's service while the latter covers Sprint. All the AT&T based products resold by MCCI are time of day and mileage sensitive. Sprint products are resold using "postalized" flat rates regardless of distance.

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.<sup>4</sup>

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-924 be, and it is hereby, granted and Mid-Com Communications, Inc., Seattle, Washington 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

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<sup>4</sup>See §75-604.

Application No. C-924

Page -5-

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.

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. Grunler*  
*Duane D. Gay*

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

//s//James F. Munnelly

*John Landis*  
Chairman

ATTEST:

*Robert R. [Signature]*  
Executive Director