

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of) Application No. C-928
AmericanWATS, Inc., Fort Washing-))
ton Pennsylvania, which seeks)
authority to operate as a) GRANTED
reseller of interexchange tele-))
communications service within)
the State of Nebraska.) Entered: August 4, 1992

APPEARANCES

For the Applicant

Joseph Valenti, Pro Se
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Fort Washington, PA
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(215) 443-9700

For the Communications Dept.

Jeffrey P. Goltz, Esq.
Legal Counsel, NPSC
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PRELIMINARY MATTERS

By application filed April 9, 1992, AmericanWATS, Inc., Fort Washington, Pennsylvania ("AWATS") seeks authority to operate as a reseller of intrastate interLATA interexchange telecommunications services in Nebraska. AWATS 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* April 10, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held June 5, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown, Commissioner Landis chairing.

BY THE COMMISSION

OPINION AND FINDINGS

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. 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 (LAWS 1986) 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. Joseph Valenti, the applicant's president, appeared at the hearing. Valenti is the applicant's founder. AWATS was incorporated in the state of Pennsylvania March 27, 1990. AWATS is a privately held corporation, the corporate officers of which are Valenti, Murray Norkin, and George Lemmon, Jr. The major stockholders are Valenti (40%), Lemmon (30%), Norkin (10%) and Gene Lynch (10%). The applicant's offices are solely in Fort Washington. The company employs ten individuals, but Valenti testified there are plans to add another 15 or so in the near future as the company operates in more and more states. At the hearing, AWATS financial statement, the certificate to do business as a foreign corporation in Nebraska, and a copy of its articles of incorporation were provided.

The application clearly establishes the application seeks only interLATA reseller authority. Additionally, in answer to questions by Commission legal counsel, Valenti specified AWATS does not seek intraLATA authority and further, the company does not have the capacity to provide intraLATA service to its subscribers. The filed application, upon which the DAILY RECORD notice is based, shows AWATS *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.²

The applicant proposes to operate as a non-facilities based reseller of AT&T long-distance service in Nebraska. The company currently has 3,000 subscribers who are billing approximately two million minutes per month. No future facilities in Nebraska are contemplated nor will any employees be located within this state. The applicant resells AT&T's software defined network (SDN), Distributed Network Service (DNS) and calling card service. AWATS will aim its service at small to medium sized business establishments.

To be profitable as a reseller, AWATS has contracted with AT&T for 15 million minutes per year worth of calling on a four year term. Under SDN, the AWATS subscriber receives rates which are equivalent to being 20% lower than the standard pro-WATS rates. AT&T bills the subscriber directly for his usage and the subscriber pays AT&T directly. On a monthly basis, AT&T accumulates the entire amount of traffic and applies to the total volume its Extended Volume Plan Discounts and Usage Reduction Plan Discounts. These discounts amount to approximately 30%. It is these discounts which are returned to AWATS in the form of a credit which ultimately comes back to the company as income.

No state commission has rejected an AWATS 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 24 states, including Pennsylvania, Maryland, Florida, California, Massachusetts, and South Carolina.

As regards subscriber billing, the applicant uses a billing agent, Digital Corporation of America, to bill its DNS network subscribers. SDN subscribers are billed directly by AT&T.

The financial information provided by the applicant was marked as Exhibits 6 and 9. The more recent information (Exhibit 9) was compiled by Farley, Drain & Company, a CPA firm in Philadelphia, Pennsylvania and covers the year ending 1991. Valenti testified that for the period ending December 31, 1991, AWATS generated total net sales of \$474,415. After expenses, the company had net income of \$80,056. This compares

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.

to comparative 1990 net income of \$90,183 and a loss of \$59,511. Assets and liabilities for 1991 were \$226,828, which compares to a figure of \$95,171 for 1990.

The applicant's proposed tariff, which is part of its application, is in accordance with the Commission's rules and regulations. The tariff differentiates between SDN, DNS, and calling card services. These products are time of day and mileage sensitive. 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.

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-928 be, and it is hereby, granted and AmericanWATS, Inc., Fort Washington, Pennsylvania be, and it is hereby, authorized to *operate as a resale carrier of intrastate interLATA interexchange 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.

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.

³ See §75-604.

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MADE AND ENTERED at Lincoln, Nebraska this 4th day of August, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel G. Kravitz
Deane D. Gay

//s//Frank E. Landis, Jr.
//s//James F. Munnely
//s//Eric Rasmussen

Frank E. Landis, Jr.
Chairman

ATTEST:

Dpt. R. J.
Executive Director