

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-929
of Enterprise Telcom Services,)
Inc., Wilmington, Delaware seeking)
authority to operate as a reseller) GRANTED
of interexchange telecommunications)
services in Nebraska.) Entered: September 1, 1992

APPEARANCES

For the Applicant

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PRELIMINARY MATTERS

By application filed May 4, 1992, Enterprise Telcom Services, Inc., Wilmington, Delaware ("ETS") seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. ETS's principal office and the location of its books and records is 103 Springer Building, 3411 Silverside Road, Wilmington, Delaware, 19310 and its registered agent is the CSC-Lawyers Incorporating Service Company, 1227 J Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha *DAILY RECORD* May 6, 1992 as required by the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held July 16, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown; Senior Counsel Hal Hasselbalch chaired the hearing.

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, 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 (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. Edward J. Conway, ETS's Secretary and Treasurer appeared at the hearing. ETS was incorporated in the state of Delaware October 1, 1991. ETS is a privately held corporation. The major stockholders are William B. Sordoni, Andrew J. Sordoni, III, Stephen Sordoni and Charles E. Parente. These individuals are also the corporate officers. The company intends to grant stock options to Frank G. Scardino and Patrick A. Bellow. The corporate officers have extensive telecommunications background as owners of a cellular telephone a local exchange carrier in Pennsylvania and a cable telephone company.

The applicant's offices are located at the Wilmington address, but Public Service Enterprises, Forty Foot, Pennsylvania, and Union Telephone Company, Blue Bell, Pennsylvania provide sales and services, respectively. At the hearing, ETS's certificate to do business as a foreign corporation in Nebraska and a copy of its articles of incorporation were provided. ETS also provided late-filed updated financial exhibits subsequent to the hearing.

On its face, the application establishes ETS seeks interLATA reseller authority. However, counsel for the applicant clarified at the hearing that the application contained a typographical omission and should also have included a request for intraLATA authority. Additionally, in answer to questions by ETS's counsel, Conway specified ETS does seek intraLATA as well as interLATA authority. Commission legal

counsel made no objection to these stipulations since the notice published in the DAILY RECORD was broad enough to encompass both types of service. The filed application, upon which the DAILY RECORD notice is based, shows ETS *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.¹

The applicant proposes to operate as a non-facilities based reseller of AT&T long-distance service in Nebraska. The company is new and has no certificates from any state commission. In fact, this Commission is the first before which the company has appeared. Nevertheless, ETS's owners have funded the company with a million dollars worth of capital to date and the company currently has enlisted 654 business subscribers who are billed approximately 854,000 minutes in the company's second month of operations. As of the date of this hearing, the company was in its third month of operation in states which do not regulate resellers.

No future facilities in Nebraska are contemplated nor will any employees be located within this state. AT&T and the applicant have obtained network services pursuant to AT&T's Tariff 12, Options 51 and 58, Tariff 15 and its Software Defined Network (SDN). The applicant resells AT&T's 1+ interexchange service, MTS, Out-WATS, In-WATS and dedicated line service. ETS intends to aim its service at small to medium sized business establishments.

To be profitable as a reseller, ETS has contracted with AT&T to purchase two million dollars worth of AT&T services (those mentioned in the preceding paragraph) in return for very low rates. ETS repackages the services and resells them through a nationwide network of sales distributors. As regards subscriber billing, the applicant uses a billing agent, Cincinnati Bell Information Systems, to bill its subscribers.

The financial information late-filed by the applicant was pre-marked as Exhibits 2 and 3. According to the financial documents, ETS had a net income of \$2,044 for the period ended June 30, 1992 on sales of \$600,548. The cost of sales was \$576,276 and this resulted in a gross profit of \$24,272. The company also provided a projected income statement for the

¹We 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.

period ending December 31, 1992. This document projects the company will have a net income at the end of the year of \$100,301 on sales of \$9.155 million with a cost of sales of \$8.679 million and a gross profit of \$476,037.

The applicant's proposed tariff, which is part of its application, is in accordance with the Commission's rules and regulations. The 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-929 be, and it is hereby, granted and Enterprise Telcom Services, Inc., Wilmington, Delaware 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.

MADE AND ENTERED at Lincoln, Nebraska this first day of September, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

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Commissioners Concurring:

Daniel G. Kuviller

Duane D. Gay

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

//s//James F. Munnelly

//s//Eric Rasmussen

ATTEST:

Frank Landis, Jr.
Chairman

Edith R. King
Executive Director