

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-930
of Tel-Save, Inc., Willow Grove,)	
Pennsylvania seeking authority )	
to operate as a reseller of )	GRANTED
reseller of interexchange tele- )	
communications service within )	
the State of Nebraska. )	Entered: September 1, 1992

APPEARANCES

For the Applicant

Jack Neal Cook, Jr., Pro Se  
Tel-Save, Inc.  
Regulatory Officer  
600 North Fourth Street  
Philadelphia, PA 19123  
(215) 922-5940

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 May 13, 1992, Tel-Save, Inc., Willow Grove, Pennsylvania ("Tel-Save") seeks authority to operate as a reseller of intrastate interLATA interexchange telecommunications services in Nebraska. Tel-Save's principal office is located at 1017 North York Road, Suite I, Willow Grove, Pennsylvania, 19090. The location of its books and records is noted above at the address of its representative, Mr. Cook. The applicant's registered agent is the CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha *DAILY RECORD* May 14, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held July 15, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Senior Counsel Hal Hasselbalch chaired the hearing.

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.

**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, and being fully informed, the Commission is of the opinion and finds:

Mr. Jack Neal Cook, Jr., the applicant's Regulatory Officer, appeared at the hearing. Tel-Save was incorporated in the state of Pennsylvania in April, 1989. Tel-Save is a privately held company, the corporate officer of which is Daniel Borislow. Borislow holds the titles of President, Secretary, and Treasurer. Meetings of the corporate board are undoubtedly not divisive. Borislow is also the only stockholder. The applicant has offices in the two locations cited above. The application included Tel-Save's financial statement, the certificate to do business as a foreign corporation in Nebraska, and a copy of Tel-Save's articles of incorporation.

The pleadings reflect the application seeks intrastate interexchange reseller authority. The application does not distinguish between interLATA and intraLATA authority. In response to a question from Commission counsel, Cook testified Tel-Save seeks only interLATA reseller 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>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.

<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 long-distance service in Nebraska. The company currently has 17,000 subscribers who are billing approximately \$1.8 million in calls per month. The applicant is a switchless reseller and no future facilities in Nebraska are contemplated nor will any employees be located within this state. Tel-Save currently employs 22 individuals.

The applicant resells switched Dial 1+ service (MTS WATS)<sup>3</sup>. Schedule A rates apply to subscribers who access Tel-Save via a local exchange carrier which provides switched access. Schedule B rates applies to subscribers who access Tel-Save via dedicated special access channels. These services are offered pursuant to resale of AT&T's software defined network service (SDN). Tel-Save also offers calling cards.

To be profitable as a reseller, Tel-Save charges its subscribers 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 carriers provides the margin of profit.

No state commission has rejected a Tel-Save application for reseller authority, nor has a formal complaint been filed against it. As of the hearing date, the applicant has operating authority in 32 states but is operating only in Pennsylvania. Cook testified the company's strategy is to wait and obtain operating authorities throughout the country before offering service beyond Pennsylvania.

The applicant does not bill its reseller subscribers under its own name. There are no intermediary billing agents involved. Instead, AT&T does the billing.

The financial information provided by the applicant was marked as Exhibit VI in the application and was compiled by Borislow and Factor, CPAs. The exhibit shows sales of \$7.767 million for the seven month period ending December 31, 1992. After costs and expenses, Tel-Save was left with income, before recovery of deferred corporate taxes, of \$201,628. After adding the recovered taxes, net income climbed to \$411,474. The retained earnings at the beginning of the seven month period (\$344,515) in addition to the net income left Tel-Save with retained earnings for the period of \$755,989.

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<sup>3</sup> Mileage Time Sensitive WATS

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The applicant's assets equaled \$2.233 million, as did its shareholder's equity/liabilities.

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-930 be, and it is hereby, granted and Tel-Save, Inc., Willow Grove, Pennsylvania be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA 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.

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<sup>4</sup>See §75-604.

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NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

*Daniel G. Unwiller*  
*Duane D. Gay*

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

//s//James F. Munnelly

//s//Eric Rasmussen

*Frank Landis, Jr.*  
Chairman

ATTEST:

*Rpt R. Lj*  
Executive Director