

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of) Application No. C-935
American Telephone Network, Inc.,)
Birmingham, Alabama, which seeks)
authority to operate as a) GRANTED
reseller of interexchange tele-)
communications service within)
the State of Nebraska.) Entered: October 20, 1992

APPEARANCES

For the Applicant

John Thomas, Pro Se
President
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For the Communications Dept.

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PRELIMINARY MATTERS

By application filed June 22, 1992, American Telephone Network, Inc. ("ATNI"), Birmingham, Alabama seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. ATNI's principal office is noted above and its registered agent is the CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508. The applicant's books and records are maintained at a separate corporate office located at 15165 Meadow Wood Drive, West Palm Beach, Florida, 33414.

Notice of the application was published in the Omaha *DAILY RECORD* June 24, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held August 24, 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
(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 (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. John Thomas, the applicant's president appeared at the hearing. ATNI was incorporated in the state of Florida May 11, 1990. ATNI is a privately held corporation, the corporate officers of which are Thomas, Rhonda Riffe (CEO), Richard Graves (Vice-President and Acting Treasurer), and Robert Sheehy (corporate legal staff and a Director). Riffe holds 92% of the stock and Thomas holds the remainder. At the hearing, ATNI's financial statement, the certificate to do business as a foreign corporation in Nebraska, and a copy of ATNI's articles of incorporation were made part of the record.

Thomas 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.²

(Footnote Continued)

and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

² We observe that a late-filed amendment to add AOS to the application is an
(Footnote Continued)

The applicant proposes to operate as a non-facilities based reseller of AT&T long-distance service in Nebraska. The company currently has between five and six thousand subscribers who are billed approximately four million minutes per month in the other states in which it operates. No future facilities in Nebraska are contemplated nor will any employees be located within this state within the foreseeable future.

The applicant resells AT&T Software Defined Network and its derivative features in a variety of ways including Dial 1+ 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).

To be profitable as a reseller, ATNI charges its customers 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 carrier provides the margin of profit.

No state commission has rejected an ATNI 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, Colorado, Connecticut Delaware, Florida, Georgia, Maine, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, 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 Sub-exhibits F, G, and H in Exhibit 1 and was compiled by the Florida CPA firm of Martinelli, Teets, and Froehlich with help from Rhonda Riffe. Thomas, relying

(Footnote Continued)

inadequate solution; the previously published notice of the application would not then accurately reflect the authority sought in the application.

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

on Exhibits F, G, and H, testified that for the period ending December 31, 1991, ATNI had total assets of \$1.824 million. Total assets and shareholder's equity/liability amounted to \$1.824 million. For the same period, Exhibit G shows ATNI earned a gross profit of \$485,020 and after deducting its loss from operations and a beginning deficit, the company ended the year with a loss of \$105,328. \$62,000 of this figure can be attributed to litigation costs accrued by the applicant in its role as the plaintiff in a lawsuit.

Exhibit H contains updated financial information for the period ending April 30, 1992. The update reflects the following: for the period, ATNI had total revenue of \$2.117 million in sales and a gross profit of \$744,323. After expenses, the applicant's net income was \$50,007.

The tariff differentiates between Schedule A through D rates, these being different service packages with individual rate structures based on time, mileage, and distance factors.

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.

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-935 be, and it is hereby, granted and American Telephone Network, Inc., Birmingham, Alabama, 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

⁴See §75-604.

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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 20th day of October, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel G. Unwiller

//s//Frank E. Landis
//s//Eric Rasmussen

Frank E. Landis
Chairman

ATTEST:

Eric Rasmussen
Executive Director