

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-939
Application of Nebraska Wes-)	
leyan University, of Lincoln,)	
Nebraska which seeks authority to)	GRANTED
operate as a reseller of tele-)	WITH RESTRICTIVE
communications services in Neb-)	AMENDMENT
raska.)	
<hr/>		Entered: November 12, 1992

APPEARANCES

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PRELIMINARY MATTERS

By application filed July 17, 1992, Nebraska Wesleyan University ("NWU"), Lincoln, Nebraska seeks authority to operate as a reseller of intrastate local exchange and interLATA and intraLATA interexchange telecommunications services in Nebraska. NWU's principal offices' address is noted above and its registered agent is William Norris at the same address. Applicant's books and records are maintained there, too.

The Omaha *DAILY RECORD* published notice of the application July 21, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held October 27, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Landis 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 rules¹, 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 when deciding reseller applications.

William Norris testified on behalf of the applicant. Norris is NWU's Vice President for Administration and has held that position for ten and one half years. Norris testified four university personnel are responsible for reseller operations, two of whom work for the school's Division of Communications and two for the Business Division. Norris testified the school has offered reseller service to its on campus student residents for approximately eight years without realizing such operations are subject to regulation. The school discovered its error as the result of a complaint which brought the school in contact with Commission staff. Until the complaint, NWU did not know it was not complying with the law.

NWU is a Nebraska non-profit IRC 501(c) corporation and is privately held. Since the school operates only in Nebraska and serves only its own students, no state commission has re-

¹ Interexchange reseller applications are governed by Neb. Rev. Stat. §75-604 and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

jected an application by NWU for reseller authority. The application makes clear and the notice published is broad enough to establish NWU is applying for both intraLATA and interLATA interexchange authority as well as resale of local exchange telecommunications. Norris repeated this position at the hearing. The applicant intends to provide service only to its on-campus students who reside in the school's dormitories. Norris stated the university has no intention of providing this service to anyone else and was not opposed to a restriction in its certificate to that effect. The school does not provide alternate operator service ("AOS") and does not seek authority to do so. We note the application would have had to petition for AOS before such authority could be considered as part of this proceeding.

NWU is currently providing reseller service to 550 of its 1650 students. The 550 students are residents on campus. Norris estimated the peak number of minutes generated by these students to be around 50,000 in September. Besides resale of 1+ long distance service, Wesleyan provides the resale of local exchange telecommunications services. Lincoln Telephone Long Distance provides the underlying long distance service Wesleyan resells. Wesleyan, in turn, charges its student subscribers the long-distance rate it pays and a two and one half cents surcharge per call to pay for the schools telephone system costs. Norris emphasized the service is not-for profit. Instead, NWU uses this service as a recruiting tool. Norris also specified that these student subscribers have the ability to bypass Lincoln Telephone Long Distance and access another long distance carrier.

The application includes a copy of NWU's articles of incorporation. The school's financial documentation was prepared by an independent CPA, Fry, White & Guszak, P.C., Lincoln, Nebraska. The financial information is accurate as of May 31, 1991. The balance sheet for this applicant demonstrates ample financial resources. Assets for the period ending show current funds assets of \$2.993 million, including \$900 thousand in cash on hand. On the other hand, the school had accounts payable and accrued expenses of \$1.156 million. The university has endowment and similar funds totaling \$19.687 million and physical plant valued at \$15.351 million. There are nearly \$3 million dollars more in assets through loan funds and agency funds. The applicant is obviously financially stable and its revenues and funds available far outweigh the costs and possible costs of its reseller operations.

The applicant did not include a proposed tariff with its application. Norris stated NWU will do so if the Commission grants it a certificate. The school takes the rates of the

underlying carrier (in this case, Lincoln Telephone Long Distance), adds the two and one half surcharge and bills the students accordingly. No deposit for the service is required. The school does require room deposits independent of telephone service.

The unusual portion of this application is the desire on NWU's part to resell local exchange telephone service. Resellers have traditionally sought long distance resale. For the record, we note that applications for provision of local telephone service are governed specifically by Neb. Rev. Stat. §75-604 (Reissue 1990). This statute provides that before granting a certificate to provide local service, the commission shall find:

"(a) The territory in which the applicant proposes to offer telecommunications service is not receiving reasonably adequate telecommunications service;

(b) the portion of the territory of another telecommunications company in which or into which the applicant proposes to construct new facilities or extend its existing facilities is not and will not within a reasonable time receive reasonably adequate telecommunications service from the telecommunications company already serving the territory; or

(c) the application is agreeable to the subscriber or subscribers and to all telecommunications companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party or parties requiring telecommunications service."

(emphasis supplied.)

In this application, subsection (c) of the statute governs the portion of the petition seeking local exchange authority. There will be no duplication of services since NWU is a non-facilities based provider. There were no protests to the application. Is the public interest and the interest of the parties requiring telecommunications services (i.e., the students) served by granting the application? We believe so because the primary users are provided with a convenient, cost-effective telephone system which relieves them of the burden delay and red tape in obtaining a phone from the traditional local telephone company. We also note that the underlying local carrier

still retains these subscribers in the sense it bills the school for the school's access to the local carrier's phone system. The local carrier suffers no economic harm. Further, the local carrier had the opportunity to protest this application and did not avail itself of the opportunity.

On the other hand, the applicant has not shown the public convenience and necessity requires a grant of a certificate broader than that which allows the applicant to provide local exchange resale service to its student subscribers. The certificate should be restricted to reflect this.

Based on the testimony and the exhibits, the application is fair and reasonable, is in the public interest, and should be granted with the restriction described above.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-939 be, and it is hereby, granted and Nebraska Wesleyan University of Lincoln, Nebraska is hereby authorized *to operate as a resale carrier of intrastate local exchange and interexchange InterLATA and intraLATA telecommunications services within the State of Nebraska.* Restriction: This grant of authority does not permit the applicant to offer local exchange common carrier service absent resale of the underlying local carrier's local service. Further, the applicant is restricted to providing resale service of local and interexchange telecommunications services to its on-campus students.

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 the Applicant file an updated 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.

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MADE AND ENTERED at Lincoln, Nebraska this 12th day of November, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel H. Unrille
Duane D. Gay

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

//s//James F. Munnelly

//s//Eric Rasmussen

Frank Landis, Jr.
Chairman

ATTEST:

W. H. King
Executive Director