

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-940
Application of Communications)
Gateway Network, Inc., Irving,)
Texas which seeks authority to) GRANTED
resell intrastate interexchange)
telecommunications services in)
Nebraska.) Entered: October 20, 1992

APPEARANCES

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PRELIMINARY MATTERS

By application filed July 31, 1992, Communications Gateway Network, Inc. ("CGN"), Irving Texas seeks authority to provide intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. The address of CGN's principal offices is noted above and its registered agent is:

C.T. Corporation System
Suite 1500
206 South 13th St.
Lincoln, Nebraska 68508

The Omaha *DAILY RECORD* published notice of the application August 3, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held October 1, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Landis chaired the hearing. Applicant provided late-filed exhibits October 5, 1992 after motion by Commission Legal Counsel.

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:

1. Nebraska was divided into three Local Access Transport Areas (LATAs) as a result of the terms of the Modified Final Judgement 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.

2. Robert Sanit testified on behalf of the applicant. Sanit is CGN's Chief Financial Officer. He holds a 1974 engineering degree from the State University of New York at Albany and a 1976 Master's Degree in Management Science from the West Coast University of Orange, California. He spent four years as an engineer and has been involved in the investment financial field until now. Sanit testified CGN's personnel have previous experience in the resale telecommunications business. Nelson Thibodeaux (President) was with a reseller company for three years and Sanit for two. Other employees have worked for other resellers and telecommunications companies.

3. CGN was incorporated in Delaware May 18, 1992. It holds no corporate relationship with any other business entity at this time² and is privately held. No state commis-

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.

² But see paragraph 13 of the Opinion and Finding section of this order.

sion has rejected an application by CGN for reseller authority except Connecticut (which is a single LATA state and does not permit intraLATA resale), nor has a formal complaint ever been filed against CGN because the company has not yet begun operations. So far, CGN is certificated in Delaware, the District of Columbia, Idaho, Indiana, Louisiana, Maryland, Michigan, New Jersey, North Dakota, Oklahoma, South Dakota, Texas, and Utah. Applications are pending in the rest of the continental United States.

4. The applicant intends to provide service throughout Nebraska in equal access areas, but Omaha and Lincoln are going to be the main focus. There is no plan to locate equipment within the state. CGN purchases AT&T's and WilTel, Inc.'s services for resale and offers variations on MTS equal access services. CGN also offers calling card and Gateway 800 Services. Sanit testified the rates charged by CGN will be ten to 35 percent less than AT&T's regular rates.

5. CGN has no customers in Nebraska while the application is pending. Since CGN does not yet operate anywhere, there are no customers nor are there any billed minutes as of the hearing date. The applicant intends to market its reseller service to businesses and not to residential customers.

6. No applications have been denied, except in Connecticut (which is a single LATA state and largely prohibits resellers), nor has the applicant been subject to any formal complaint proceeding before other state regulatory bodies.

7. The application includes a copy of CGN's articles of incorporation and of the certificate of authority to transact business in Nebraska as a foreign corporation issued by the Nebraska Secretary of State July 23, 1992 (See Exhibits 2 and 3).

8. No other state regulatory agency has required the applicant to procure a performance bond.

9. The applicant's financial documentation was prepared by an independent CPA, Larry T. King & Associates, Dallas Texas on July 8, 1992. The balance sheet for this start-up company shows total assets for the period ending May 31, 1992 of \$250,675 including cash on hand in the amount of \$218,820. Conversely, the company has a long term debt liability in the form of a loan from its stockholders in the amount of \$180,014.

10. Sanit provided late filed Exhibits 4A and 4B which are income projections for the applicant's Nebraska operations and its nationwide operations, respectively. Both exhibits project a revenue stream beginning in December 1992 and track the pro-

jections up to and including August, 1993. Exhibit 4A projects revenues for that nine month period in Nebraska to total \$43,000 with a pre-tax profit of \$6,090. Exhibit 4B projects a \$9,843 pre-tax profit will begin in November, 1992 and grow monthly to \$514,180 by August, 1993. The month to month analysis shows anticipation of a steady profit between 7.57 percent starting in December to 7.97 percent in August. The projections show a detailed breakdown of operating expenses have been factored into the analysis.

11. 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.

12. 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 as modified.

13. We note that based on the information in the application and the testimony, a company called Roborn Industries (formerly Roborn Apparel) has a warrant to purchase 51 percent control of the applicant. This warrant is to be exercised by November 20, 1992. If this transfer takes place, the applicant must seek approval from this Commission of the transfer pursuant to Nebraska Revised Statutes §§75-148 et seq. (Reissue 1987). While in many ways a formality, we note this requirement for the benefit of the applicant, especially considering its newness generally to the market and specifically to Nebraska.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-940 be, and it is hereby, granted and Communications Gateway Network, Inc. of Irving, Texas is hereby authorized *to operate as a resale carrier of intrastate interexchange InterLATA and intraLATA telecommunications services within the State of 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 the Applicant file an updated tariff prior to offering service pursuant to the certificate granted in this order.

Application No. C-940

Page -5-

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. Huwiler

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

//s//Eric Rasmussen

Frank E. Landis, Jr.
Chairman

ATTEST:

D. R. Long
Executive Director