

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-943
of American Teletronics Long Dis-)
tance, Chicago, Illinois, which)
seeks authority to operate as a) GRANTED
nonfacilities-based reseller of)
interexchange long distance tele-)
communications services within)
the State of Nebraska.) Entered: January 26, 1993

APPEARANCES

For the Applicant

For the Department of
Communications

Paul E. Tennola, Pro Se
Vice-President for Business
Development
70 West Madison Suite 5500
Chicago, IL 60602
(312) 372-7575

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 August 24, 1992, American Teletronics Long Distance, Inc. ("American") of Chicago, Illinois seeks authority to operate as a reseller of intrastate interLATA interexchange telecommunications services in Nebraska. American's principal office and the location where its books and records are kept is noted above and its registered agent is the CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha *DAILY RECORD* August 26, 1992 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held October 30, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown; Commissioner Landis chaired the proceeding.

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,

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, 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 that statute. This was recognized by the Nebraska Legislature when it approved L.B. 835 (LAWS 1986) because interexchange services (which include resellers) governed in part by Neb. Rev. Stat. §86-805 (Reissue 1987) are referenced to in Neb. Rev. Stat. §75-604 (Reissue 1987). For this reason, the Commission distinguishes between intraLATA and interLATA resale when considering reseller applications.

Mr. Paul Tennola, the applicant's Vice-President for Business Development, appeared before the Commission. Tennola is responsible for the applicant's financial planning, corporate strategy, and business development. He has worked for the company for one year and has a 1987 degree in finance from Indiana University. He has worked as a consultant in the telecommunications field before starting with American.

The applicant was incorporated in Illinois in 1989. American is a privately held corporation, the corporate officers of which are John Paulsen (Chief Operating Officer and Director), Frank Aulenta (Executive Vice-President and Secretary-Treasurer), and Tennola. Paulsen, Aulenta, Henry Paulsen, Dennis Macewicz, and Casey Macewicz are the major stockholders.

Paulsen worked previously for approximately ten years in the private sector and worked "with" AT&T and Pacific Bell. Aulenta has about 20 years of telecommunications experience, of which 15 years were spent with AT&T. Tammy Stanton has

(Footnote Continued)

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

worked in the telecommunications field for five years, including two years with Allnet (a reseller). 35 employees are employed by the company. These employees receive a six hour training session in telecommunications and another six hours devoted to the reseller business. Employees are required to have a minimum of an MBA or a BS degree and at least two years of experience. Higher position employees require even more "significant" telecommunications field experience.

The applicant has a single business office at the Chicago address, but also has various marketing offices across the country. At the hearing, the applicant's financial statements, the certificate to do business as a foreign corporation in Nebraska, and a copy of American's articles of incorporation were provided.

Tennola testified (and the application reflects) that the company seeks interLATA 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 a reseller certificate does not include AOS unless specifically petitioned for in the application.²

The applicant proposes to operate as a non-facilities based reseller of AT&T long-distance service in Nebraska. No future facilities in Nebraska are contemplated nor will any employees be located within this state. The applicant resells AT&T's Software Defined Network (SDN) switched Dial 1+ service. In addition to 1+ service, American also offers 800 inbound WATS service and calling card service.

To be profitable as a reseller,³ American has entered into a four year contract with AT&T. The contract requires American to commit to a specific volume in order to qualify for the substantial discount which allows American to resell for a profit. The applicant then charges its customers rates below the underlying carrier's tariff rates for intrastate Nebraska calling. The difference between the rate paid by the customers

² 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.

³ The Federal Communications Commission still regulates AT&T as a dominant common carrier. Therefore, a tariff still controls AT&T's rate structure. Tariff No. 1 permits AT&T and a reseller such as American to enter into the type of agreement described here.

and the discount received from AT&T provides the margin of profit. Tennola projected subscriber savings of up to 30 percent below the AT&T rate.

No state commission has rejected an American 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: California, Florida, Georgia, Indiana, Iowa, Kentucky, Maryland, Minnesota, North Carolina, North Dakota, Texas, and Wisconsin. The authority sought here in Nebraska is the same as obtained in those states. The applicant does not propose to provide service of a different type in this state.

Tennola testified the applicant has approximately 5,000 subscribers to its service across the country in states where it currently operates. These subscribers are generating 1.2 million minutes of usage monthly.

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 carrier for processing the customer billing.

The financial information provided by the applicant was marked as Exhibit 3F and 3G and was compiled in-house by Daniel Knight, who is a CPA and the company's controller. Tennola, relying on Exhibits 3F and 3G, testified that for the period ending May 31, 1992, American generated total revenues of \$2.91 million for the five month period and \$517 thousand in May alone. Gross profits for the same periods, respectively, were \$432 thousand and \$137 thousand. According to Tennola, the company is currently completing a \$5 million senior preferred stock offering which will increase the company's value. Total assets and shareholder's equity/liability amounted to \$2.023 million. After expenses, including salaries, the applicant showed a loss of \$115 thousand and \$1.095 million, for the periods described above, respectively. Tennola testified that American is now billing \$1 million per month while its costs have remained static. Also, at the time covered by the income statement, Tennola testified AT&T provisioning delays were limiting American to only 50 percent of its business capability.

Exhibit 3G is a projected income statement for 1992. Tennola testified the projections are still accurate. Tennola testified that in period since the application was filed, the projections turned out to be a bit low in September and October while August was a bit high. The projections therefore still managed to end up being accurate, although the figures on a monthly basis were not quite so. The projections

show that American became profitable in July with a profitability (on a percentage basis) of 1.6 percent, 6.4 percent in August, and 6.1 percent in September. By September, American had taxable net income of \$61,355 after expenses on receipts of approximately \$1 million.

At the hearing, the applicant was directed, upon motion of Commission legal counsel, to provide a late-filed update of the financial information. Exhibit 4 was received January 11, 1993. These financial statements are for the period ending December 31, 1991 and were prepared by an independent auditor, Carr & Associates, a CPA firm in Chicago.

Exhibit 4 shows that the company had total current assets for 1991 of \$680,865, property and equipment of \$211,892 and, including capitalization, total assets of \$2.404 million. Also for 1991, the company had a gross profit of \$64,857. After expenses, the company lost \$2.882 million.

The tariff differentiates among four SDN 1+ plans. Tennola stated these plans vary according to the volume of calling made by the subscriber. American's tariff for long distance service is time of day and mileage sensitive.

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.⁴

This is a relatively new company; assuming the income projection filed with the application is accurate (and Tennola testified it was accurate through August, 1992), the company has turned the corner and is now operating in the black. Coupled with the demonstration that the company is competently operated and has the requisite expertise, we believe the evidence is strong enough to warrant approval of the application.

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.

⁴ See §75-604.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-943 be, and it is hereby, granted and American Teletronics Long Distance, Inc., of Chicago, Illinois 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 26th day of January, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel S. Unrille
Duane D. Lay
 //s//Rod Johnson
 //s//Frank E. Landis, Jr.
 //s//James F. Munnely

James J. Landis
 Chairman

ATTEST:

John R. Hight
 Executive Director