

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-944
of Pegasus Information Systems,)	
Inc., Bloomington, Indiana which)	GRANTED WITH
seeks authority to operate as a)	AMENDMENT
reseller of telecommunications)	
services in Nebraska.)	
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	Entered: November 24, 1992

APPEARANCES

J. Craig Brubaker, Pro Se
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Inc.
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PRELIMINARY MATTERS

By application filed August 25, 1992, Pegasus Information Systems, Inc. ("Pegasus") of Bloomington, Indiana seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. The address of the applicant's principal office is noted above and its books and records are also maintained there. The registered agent is James King, 3900 Orchard, Lincoln, Nebraska, 68503.

The Omaha *DAILY RECORD* published notice of the application August 27, 1992 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held October 19, 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.

J. Craig Brubaker testified on behalf of the applicant. Brubaker is President and founder of Pegasus. The company has existed for four years and is an Indiana business corporation. For the last ten years, Brubaker has owned and operated cable television companies across the United States. This application and a pending application in Indiana are the applicant's first venture into telecommunications resale. The application in this case is unusual because Pegasus seeks to provide resale service to students who attend Wayne State College, Wayne, Nebraska and to similarly situated small colleges in Nebraska.

Pegasus was incorporated in 1988 and is privately held. Brubaker and his wife are the sole stockholders and corporate officers. No state commission has rejected a petition for authority from Pegasus. As noted above, however, the company is starting out in Nebraska and Indiana and has no particular track record.

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.

The application makes clear and the notice published is broad enough to establish Pegasus is applying for both intraLATA and interLATA interexchange authority. Brubaker repeated this position at the hearing. Pegasus offers resale of 1+ long distance service. The applicant intends to provide service to on-campus students who reside in the school's dormitories and to off-campus students through use of a speciality (calling) card.

Pegasus 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.

Pegasus currently provides reseller service to 962 of Wayne State College's approximately 1300 students. The 962 students are both on and off-campus residents. Brubaker testified the students generated 158,000 minutes from 16,915 calls made during the period of September 15 to October 15, 1992. LDDS Communications provides the underlying long distance service the applicant resells. Pegasus, in turn, charges its student subscribers the AT&T long-distance rate, less 25 percent. Wayne State does not profit from its arrangement with Pegasus. Instead, the college uses this service as a recruiting tool. Brubaker also specified that the student subscribers have the ability to bypass Pegasus (and, consequently, LDDS) and access other long distance carriers.

The application includes a copy of Pegasus' articles of incorporation. Since Pegasus has no financial history, Brubaker provided financial records reflecting his personal financial status and the financial condition of his cable television venture, Pegasus Communications, Inc ("PCI"). PCI's and Brubaker's personal financial statements were prepared by Larry Davis, a CPA employed by PCI. The personal financial information is up to date as of August 31, 1992 while PCI's information is provided as of December 31, 1991.

Brubaker's personal balance sheet demonstrates ample financial resources with assets of \$2.6 million, including \$320 thousand in cash assets. Brubaker has liabilities of \$432 thousand with a resulting net worth of \$2.163 million. PCI shows total assets of \$821 thousand and liabilities of \$499 thousand. For the year ending December 31, 1991, PCI earned \$729 thousand and showed a net profit of \$184 thousand. The applicant's owner is obviously personally financially secure; we expect from the documentation provided as well as the testimony at the hearing that the assets described above are eligible for use by the applicant while it builds its base as a reseller.

The applicant did not include a proposed tariff with its application. Brubaker stated Pegasus will do so if the Commission grants it a certificate. The tariff will be time and distance sensitive; there will be no flat rate offerings. No deposit for the service is required unless a student subscriber wishes to exceed a \$75 per month billing limitation. The school does require room deposits independent of telephone service.

This application differs from the recent application by Nebraska Wesleyan University, Lincoln, Nebraska (Application No. C-939) which sought, as a reseller, to resell local exchange telephone service in addition to the more ordinary practice of reselling long distance service. Pegasus cannot resell local exchange service and a grant of authority is not to be construed otherwise.

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-944 be, and it is hereby, granted and Pegasus Information Services, Inc. of Bloomington, Indiana is hereby authorized *to operate as a resale carrier of intrastate 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 or resale of the underlying local carrier's local service. Further, the applicant is restricted to providing resale of interexchange telecommunications services to its student subscribers, both on and off campus.

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.

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IT IS FINALLY 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 24th day of November, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel S. Munnely
Duane D. Gay

//s//Frank E. Landis, Jr.
//s//James F. Munnely

Frank E. Landis, Jr.
Chairman

ATTEST:

John R. Sij
Executive Director