

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
Operator Service Company, Lubbock,)
Texas, which seeks authority to)
operate as an alternate operator)
services provider and as a resale)
carrier of intrastate intraLATA and)
interLATA telecommunications ser-)
vices in the State of Nebraska.)

Application No. C-956

GRANTED IN PART
DENIED IN PART

Entered: February 23, 1993

APPEARANCES

Kirk Smith, Pro Se
President
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PRELIMINARY MATTERS

By application filed October 22, 1992, Operator Service Company (OSC) of Lubbock, Texas seeks authority to operate as an alternate operator services provider and as a reseller of intrastate IntraLATA and InterLATA telecommunications services in Nebraska. OSC's business address is listed above and its registered agent is the Prentice-Hall Corporation System, Inc., 1900 FirstTier National Bank Building, 222 South 13th Street, Lincoln, Nebraska, 68508.

The Omaha Daily Record published notice of the application October 27, 1992 per the Commission's procedural requirements. No one protested the application. Hearing before the Commission was held 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, and being fully

¹Interexchange reseller applications are governed by Neb. Rev. Stats. 75-604 and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12. Alternate Operator Services are governed by Rule 003.16.

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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 Judgement (MFJ) 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 Ne.b 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 Legislature in L.B. 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

The Applicant's witness testified, and the pleadings reflect, that the Applicant seeks both interLATA and intraLATA authority. We observe the Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.²

Kirk Smith, the applicant's president, testified on its behalf. Smith joined the company a year and a half ago. He has a general business degree from Texas Tech University and an MBA from the University of Denver. He used to be a vice president of finance for a defense contractor called "E Systems." Smith is the applicant's business relations chief.

OSC was incorporated in Texas in 1987. It is a privately held subchapter S corporation. The company's corporate officers are CEO Michael Smith and Kirk Smith. Its major stockholders are both

²We note that a late-filed amendment to add AOS to the application is an inadequate solution; the previously published notice of the application would not accurately reflect the authority sought in the application.

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Smiths, Virgil Pettigrew, and David Tacke. These four stockholders own 95% of OSC.

OSC is a long distance telecommunications company which processes and transmits operator assisted long distance telephone calls made from multi-telephone facilities such as hotels and hospitals and from pay telephones. The applicant also provides operator services and billing and collection services to other long distance companies. OSC intends to provide resold intrastate operator assisted telecommunications service between points within Nebraska. Service is proposed to be provided 24 hours a day, seven days a week. Interstate operator assisted telecommunications services (provided pursuant to current Federal regulations) are offered in conjunction with intrastate service. OSC proposes to provide originating service to prospective customers throughout the State of Nebraska.

Service is offered to hotels, hospitals, educational institutions, pay telephones, and similar entities. Calls are connected to OSC via Feature Group B, Feature Group D or 800 number switched access connections. The calling property is identified by either the Automatic Number Identification (ANI) as provided by the telephone company when Feature Group D access is used, or by authorization code which is programmed into the premises equipment and transmitted to OSC on Feature Group B or 800 calls.

Once the call reaches OSC, it is handled based on the amount of operator assistance required. OSC processes collect, person-to-person, third party billed, calling card and credit card calls. After all billing and calling routing information is collected by OSC, each call is switched via OSC's ABC switch and terminated over the resold facilities of the underlying carrier.

Billing of calls is performed by local exchange carriers through billing and collections contracts maintained by Zero Plus Dialing, Inc. (ZPD). ZPD is an authorized agent of OSC for billing and collection purposes. All operator assisted calls handled by OSC are branded with OSC's name and billed at OSC's rates as specified in its tariff. Tent cards are provided by OSC for placement by each telephone which identify operator service information and provide contact names and numbers for rate

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information.

In its application, OSC states that while it "provides primarily operator assisted telecommunications service, the company may provide 1+ services to presubscribed customers at a later date." Therefore, while the applicant seeks common carrier resale authority, it is clear OSC will not provide reseller service in Nebraska immediately upon a grant of authority to do so by this Commission and no sooner than June, 1993. The Commission's past practice has been to deny applications for reseller authority where the applicant was not prepared to offer the service upon a grant of authority. See, e.g., Application Nos. C-942 and C-956, Application of Lubbock Radio Paging Service, Inc. dba Stenocall (November 5, 1992) and Application of Resurgens Communications Group, Inc. (February 16, 1993).

The company has AOS intrastate authority or applications pending in the following states: Arizona, California, Colorado, Florida, Idaho, Illinois, Maryland, Michigan, Mississippi, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Texas, Washington, West Virginia, and Wisconsin. No state commission has rejected an application from OSC, nor has the company been the subject of a formal or informal complaint before such commissions. OCS is authorized to provide intrastate interexchange reseller services in Colorado, Florida, Idaho, Maryland, New Jersey, New York, New Mexico, North Dakota, Oregon, Pennsylvania, and Washington.

In terms of the company's technical competence to conduct itself in Nebraska, OSC uses network switching and transmission facilities to ensure consumer satisfaction with its service. The company switches calls with a Multi-Application Exchange switch manufactured by Advanced Business Communications of Dallas, Texas. The ABC MAX switch is a digital switch currently with a 2400 port capacity, expandable to 24,576 ports. Features of the switch include automatic transmission level control, fully redundant components, fault detection of circuit boards, redundant Module Control Processors, and nonblocking distributed switching modules. Back-up power supplies are available in the event of a power loss.

OSC leases transmission facilities from long-distance

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carriers. OSC uses facilities leased from MCI, Wiltel, and others. Transmission facilities are tested for end-to-end level standards.

OSC does not collect deposits from or require advance payments by its subscribers. The Applicant intends to provide service originating from and terminating to points located throughout the state of Nebraska. Calls may originate from or terminate to any valid NPA-NXX within the State. Intrastate service is offered in conjunction with interstate service.

Exhibit 5 is OSC's financial information. The company does not produce annual reports, so none is available for examination. Exhibit 5 was prepared by the company's accountant, reviewed by the witness, Kirk Smith, and further reviewed by an outside CPA, William G. Morris of Lubbock, Texas. As of September 30, 1992, the applicant had \$2.638 million in assets, liabilities, and equities including \$529 thousand in physical plant and \$998 thousand in accounts receivable. The company had a \$650 thousand Small Business Administration Loan. This loan has shrunk to \$342 thousand. Smith testified the applicant intends to be debt free by the end of 1993. For the nine month period ending September 30, 1992, OSC generated \$12.24 million in revenues. After expenses, the company was left with \$1.02 million in operating income and a net income of \$966 thousand.

The company's balance sheet for the period ending June 30, 1992 shows it has total assets and liabilities and equities of \$2.71 million. This includes \$521 thousand in physical plant and \$1.077 million in accounts receivables. Smith stated that the company lost money in its first three years (1988, 1989, and 1990). For the six month period ending June 30, 1992, OSC had \$7.08 million in sales with a resulting gross margin of \$1.554 million. The company's operating income for the period amounted to \$523 thousand and generated a net income of \$473 thousand.

For 1991, OSC's Statement of Income and Retained Earnings shows that it generated revenues of \$9.410 million and had a gross margin of \$2.414 million. This left the company with an operating income of \$929 thousand and a net income of \$171 thousand.

It appears from the financial information that this applicant is

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sound in its business practices and has the requisite degree of business acumen to compete successfully.

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.

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-956 be, and it is hereby, granted and Operator Service Company of Lubbock, Texas is hereby authorized to operate as an alternate operator services provider pursuant to this Certificate in both the intrastate interexchange interLATA and intraLATA telecommunications long distance market within the state of Nebraska.

IT IS FURTHER ORDERED that the applicant's petition for intrastate interLATA and intraLATA interexchange telecommunications resale authority be, and it is hereby, denied for the reasons discussed previously and hereby incorporated by reference.

IT IS FURTHER ORDERED that the 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 FINALLY ORDERED that this order be, and it is hereby, made the Commission's official certificate of authority to furnish

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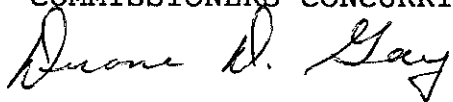
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the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 23rd of February,
1993.

NEBRASKA PUBLIC SERVICE COMMISSION

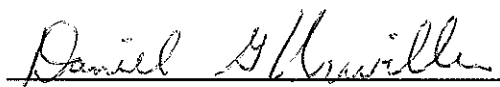
COMMISSIONERS CONCURRING



//s//Rod Johnson

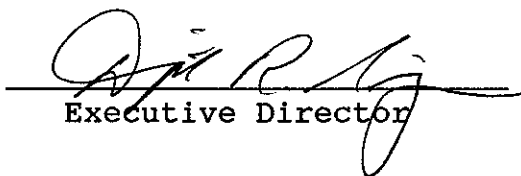
//s//James Munnelly

//s//Daniel G. Urwiller



Vice Chairman

ATTEST:


Executive Director