

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of International Telecommunications Exchange Corp. of Atlanta, Georgia which seeks authority to operate as a resale carrier of intrastate interLATA and intraLATA telecommunications services within the State of Nebraska.) Application No. C-962
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) GRANTED
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)
) Entered: February 23, 1993

APPEARANCES

Jerry Willis, Vice President for Operations, Pro Se
5901-A Peachtree Dunwoody Road
Suite 500
Atlanta, GA 30328
(404) 395-1885
Jeffrey P. Goltz, Esq.
NPSC Communications Dept.
P.O. Box 94927
Lincoln, NE 68509
(402) 471-3101

PRELIMINARY MATTERS

By application filed November 9, 1992, International Telecommunications Exchange Corporation (INTEX), Atlanta, Georgia seeks authority to provide intrastate interLATA and intraLATA telecommunications resale services in Nebraska. INTEX's business address is noted above and its registered agent in Nebraska is the Prentice-Hall Corporation.

The Omaha Daily Record published notice of the application November 10, 1992 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held January 6, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown.

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 advised, 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

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.

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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.

Jerry Willis, Vice President for Operations and Corporate Secretary appeared at the hearing on behalf of the Applicant. He has worked for INTEX since May, 1991. Prior to joining INTEX, he was employed by Telecom USA and by Continental Telephone (now Contel, a GTE subsidiary). At INTEX, Willis is responsible for customer support, tariff filings, and negotiations with carriers for volume discounts.

Willis testified, and the application reflects, that the Applicant seeks both interLATA and intraLATA authority. The filed application, upon which the DAILY RECORD notice was based, does not seek Alternate Operator Service (AOS) 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

INTEX is a Delaware corporation and was incorporated in September, 1990. It is not a part of a holding company and is privately held. John Paul Dejoria holds 75.3% of the company's shares and Bruce McCullough holds 7.1% of them. Other shareholders possess less than 5%. Curt Hendrix is the company's CEO, Phillip Cox is its Chief Financial Officer and, as noted, Willis is the Secretary.

The company has intrastate authority or applications pending in the following states: Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

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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INTEX was the subject of a formal complaint before the Florida State Commission for late filing of its application. The Commission fined INTEX \$2500 on October 24, 1991. The company has not been subject to any other formal or informal complaints in the last two years.

INTEX 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.

Sprint Communications Company L.P. is INTEX's current underlying carrier. The parties have a long term contract based on INTEX's volume commitment which allows it to buy at deeply discounted wholesale rates. By buying at the wholesale rate, INTEX can offer its subscribers the same service as Sprint offers at prices which tend to be 12% to 25% less depending upon the service.

The Applicant did not begin operations until the first quarter of 1991; therefore, there are no financial statements prior to that time. INTEX does not produce annual reports, therefore a copy is not available. INTEX did provide a balance sheet and profit and loss statement for the final three quarters of 1991 and an interim financial statement for 1992 (Exhibit 6).

Exhibit 6 was prepared internally by the company's CPA, Phillip Cox in July, 1992. Mr. Willis certified in his testimony that the information contained in the exhibit is accurate and true. As of June 30, 1992, the company had \$3.960 million in assets and liabilities and equities. The assets included \$211,000 in cash and \$3.407 million in accounts receivable. The company had \$208,000 in physical plant and equipment, mostly in computer equipment and furniture.

The income statement for the same period shows for the six month period ending June 30, 1992, INTEX generated total revenues of \$3.841 million with a gross margin of \$741,000. After operating expenses are deducted, the company showed a loss of \$1.579 million. For the three quarters of 1991, the company lost \$3.273 million and had total revenues of \$2.55 million. Mr. Willis testified that since July of 1992 the company has seen its losses continue to decline on a monthly basis. INTEX predicts it will become profitable by the end of the first quarter in 1993.

In support of its application, INTEX offered the following statement:

"As a switchless reseller, all network switching equipment and transmission facilities used by INTEX in providing service are owned and operated by its

underlying carrier. No investment in new network switching facilities on the part of the Applicant will be required to provide the proposed services. Expenses from the underlying carrier related to transmission costs will be incurred on an incremental basis as service is provided. As a result of its minimal investment and the incremental nature of its expenses, INTEX expects to break-even in Nebraska during the first month of service and earn a profit after that time."

If the application is granted, INTEX will offer intrastate long distance, 800 number, and travel card service to its Nebraska subscribers. INTEX Basic and INTEX NET Long Distance Services allow subscribers to place direct dialed calls to terminating locations. Calls are placed by dialing "1+" and the destination telephone number, including the area code if applicable. Subscribers may access both services via the switched access facilities of the local exchange company. INTEX NET Long Distance Service subscribers may also utilize dedicated access facilities.

INTEX 800 Service is an inward WATS Service. It permits termination of interstate and intrastate calls from diverse geographic locations to customer local exchange lines or to dedicated access facilities. With INTEX 800 Service, the subscriber is billed for the call rather than the call originator.

INTEX Travel Card Service allows subscribers to place direct dialed calls to terminating locations from locations other than their normal place of business. An 800 access number must be dialed to reach the INTEX network. A customer-specific authorization code must also be dialed in addition to the destination telephone number.

The company also offers Account Code and Toll Restriction features to its subscribers to help track long distance expenses and reduce toll abuse. Subscribers are billed directly by INTEX for services provided by the company. INTEX's name, address, and telephone number appear on each customer bill. INTEX provided a toll-free telephone number for billing inquiries and customer assistance.

The Applicant's proposed tariff which is part of the 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. We note however, the financial state of this company is somewhat questionable. In its defense, INTEX is a new business and new businesses take time to become profitable and prosper. We therefore additionally will require that an annual

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balance sheet and income statement be provided to the Communications Department each and every year for the next three years as a condition of this grant of operating authority.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-962 be, and it is hereby, granted and International Telecommunications Exchange Corporation of Atlanta, Georgia 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 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 provide to the Communications Department an annual balance sheet and income statement be provided each and every year for the next three years as each becomes available to the company.

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 the service authorized herein as a common carrier.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Quence D. Gay

//s//Rod Johnson
//s//James Munnelly
//s//Daniel G. Urwiller

Daniel G. Urwiller
Vice Chairman

ATTEST:

D. R. [Signature]
Executive Director