

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Landmark Communi-
cations Company, Inc., Lawrence,
Kansas for a certificate of public
convenience and necessity to trans-
act the business of a reseller of
interexchange telecommunications
services in Nebraska and for app-
roval of its initial tariff.

) Application No. C-966

) GRANTED AND
) PROTECTIVE ORDER ISSUED

) Entered: March 30, 1993

APPEARANCES

For the Applicant
Steven G. Seglin, Esq.
CROSBY, GUENZEL, DAVIS KESSNER
& KUESTER Law Firm
134 South 13th St. Suite 400
Lincoln, NE 68508
(402) 434-7300

For the Communications Dept.
Jeffrey P. Goltz, Esq.
Nebraska Public Service Comm.
1200 "N" Street, The Atrium
Suite 300
Lincoln, NE 68509
(402) 471-3101

PRELIMINARY MATTERS

This matter comes before the Commission pursuant to an application filed December 21, 1992. Landmark Communications, Inc. ("Landmark"), a Kansas corporation domiciled in Lawrence, Kansas, seeks authority to operate as a reseller of interexchange long distance telecommunications services in Nebraska. The Applicant's business address is 2721 West 6th Street, Lawrence, Kansas, 66049. Its registered agent is Steven G. Seglin.

Notice of the application was published in the Omaha Daily Record on December 23, 1992. There were no protests filed. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska on February 26, 1993 with appearances as shown. Commissioner Gay chaired the proceeding. At the hearing, Landmark's pre-marked Exhibits 3A through 3C were admitted. These exhibits include a copy of the Applicant's articles of incorporation, certificate to do business in Nebraska as a foreign corporation and a proposed tariff. At the hearing, Landmark's financial exhibits were admitted as Exhibit 4. The company was asked to provide a projected income statement by the Staff Legal Counsel as a late-filed exhibit and this was subsequently admitted as Exhibit 5.

The Applicant's witness testified, and the pleadings reflect, that the Applicant seeks both interLATA and intraLATA authority. The filed application, upon which the Omaha DAILY RECORD notice was based, does not seek authority to provide Alternate Operator Service (AOS). We observe the Commission has consistently held an

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application for reseller authority does not include AOS unless specifically petitioned for in the application.¹

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 rules², 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 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 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 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.

David L. Ross testified. He is the Applicant's vice-president. He was a professor of business for ten years at Pittsburgh State University (Kansas) and has been a consultant throughout the years. Approximately four years ago, he entered the telecommunications field. He has been with Landmark for about a year. Ross deals with regulatory issues, administrative and financial matters of the company, and its marketing and sales.

Landmark owns no transmission facilities. Landmark intends to offer services to its subscribers using facilities of the communi-

¹We 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.

²Interexchange 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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cations networks of AT&T and LDDS. The Applicant does not plan to construct any telecommunications facilities of its own.

The Applicant is a privately-held corporation whose officers are: Alvin J. Heck (President and Director), Ross, Karen S. Thompsen (Secretary and Director), and Gail A. Ross (Director). Presently, the company's stock is owned by Heck (1/3), GAR, Inc. (1/3), Sports Management Services, Inc. (1/6), and Jayhawk Properties, Inc. (1/6).

The Applicant possesses intrastate operating authority in Kansas at this time with applications pending in several states, including Nebraska. Landmark does not intend to seek intrastate authority in all 48 contiguous states. There have been no formal or investigatory proceedings against Landmark.

To support the application, the company stated in its petition:

"15. Landmark's entry into the Nebraska marketplace is in the public interest because Landmark intends to make a uniquely attractive blend of service quality, network management and reporting, and low rates available. Namely, Landmark's offering ultimately will enable small and medium businesses in Nebraska to obtain long distance services at rates which previously were available only to larger businesses.

16. In addition to the direct benefits delivered to the public by its services, Landmark's entry into the Nebraska marketplace will benefit the public indirectly by increasing the competitive pressure felt by existing IXC's spurring them to lower costs and improve services in response."

Ross discussed the types of reseller service to be offered in Nebraska. Landmark will offer interLATA and intraLATA long distance service, an 800 inbound service, and a travel card. The company will emphasize small and medium business subscribers but will provide service to residential subscribers if requested to do so by a subscriber.

At the hearing, Landmark's attorney moved that the financial exhibits be sealed pursuant to a protective order. Staff made no objection to the motion. Title 291 Neb. Admin. Code Ch. 5, Rule 003.01A provides: "The Commission shall maintain safeguards for the protection of proprietary information, included but not limited to, protective orders and limited distribution of the proprietary

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information." The hearing officer, Commissioner Gay, granted the motion.

Ross testified Landmark's revenues for the first two months of 1993 are approximately equal to the revenues for all of 1992. They appear to be growing at a rate of 25% per month. Currently, the Applicant's subscribers are generating approximately 200,000 minutes of long distance usage per month. The financial exhibits and the testimony of Ross show that this start-up company has total assets and liabilities and stockholders' equity of \$17,662 as of December 31, 1992. For the same period, Landmark generated \$25,465 in gross profits. The company lost \$7,281 but some of the expenses for the year were one time costs.³ Ross testified he believed the company will generate about \$125,000 net profit before tax for 1993. Late-filed Exhibit 5 supports the projection made by Ross at the hearing.

The Applicant's proposed tariff which is part of its application is in accordance with the Commission's rules and regulations. The tariff is primarily flat-rated, although it does contain a mileage sensitive offering which has not been used by subscribers because it matches AT&T's highest tariff. Ross testified the State of Kansas requires Landmark to offer AT&T's highest tariff and the Applicant's generic tariff therefore contains this offering in Nebraska, but will probably not be used by a subscriber since it is not particularly price effective. The tariff appears reasonable in light of the proposed 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

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-966 be, and it is hereby, granted and Landmark Communications, Inc., Lawrence, Kansas is hereby authorized to operate as a resale carrier of intrastate interex-

³Accounting, legal, and start up costs to develop the company's internal billing system.

⁴See Section 75-604.

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change interLATA and intraLATA long distance telecommunications services within the state of Nebraska.

IT IS FURTHER ORDERED that the financial information identified in Exhibits 4 and 5 be, and it is hereby, sealed pursuant to a protective order incorporated herein.

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 the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 30th day of March, 1993.

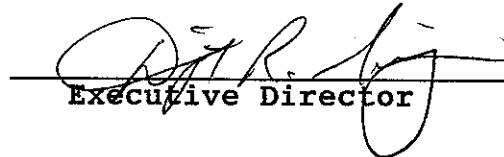
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

//s//Duane D. Gay
//s//Frank E. Landis, Jr.
//s//James Munnelly


Chairman

ATTEST:


Executive Director