

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Feist Long Distance Services, Inc., Wichita, Kansas which seeks a Certificate of Public Convenience and Necessity to operate as a re- seller of interexchange telecom- munications services within the State of Nebraska.) Application No. C-970)))) GRANTED)))))) Entered: May 4, 1993
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APPEARANCES

George Sparkman, Chief Fin. Officer
and Secretary/Treasurer, Pro Se
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PRELIMINARY MATTERS

This matter comes before the Commission upon application of Feist Long Distance Services, Inc. ("Feist"), a Kansas corporation seeking authority to provide intrastate interLATA and intraLATA interexchange telecommunications resale services in Nebraska. The Applicant's business address is noted above and its registered agent in Nebraska is CT Corporation System, 206 South 13th Street, Suite 1500, Lincoln, Nebraska, 68508.

The Omaha Daily Record published notice of Feist's application January 25, 1993. No protests to the application were received. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown March 18, 1993. 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 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),

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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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.

The Applicant's witness, George Sparkman, 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, and the testimony reflects, that the Applicant does not seek authority to provide Alternate Operator Service (AOS). We observe the Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.²

At the hearing, Feist's pre-marked exhibits A through C were admitted into evidence. Late-filed exhibit D (additional financial information) was also made a part of the record. These exhibits include the company's articles of incorporation, certificate to do business in Nebraska as a foreign-domiciled corporation, financial documents, and a proposed tariff.

Sparkman is Feist's Chief Financial Officer and Secretary/Treasurer. Sparkman earned a B.A. in Accounting from the University of Texas. After service in the U.S. Marine Corps, he worked for Corporate Education International and then was President of Professional Development Systems until 1987. He was president of his own publishing company for three years and then joined Feist Publications in 1990 and joined Feist Long Distance shortly thereafter.

Feist was incorporated in Kansas in 1992. Feist began by buying a then existing long distance company, Switchboard Long Distance which was another Kansas corporation. Feist is a privately-held standalone company. Its corporate officers are Roberta Feist (CEO), and Sparkman. Roberta Feist is the company's sole stockholder.

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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Currently, the Applicant has intrastate long distance operating authority in Oklahoma, Kansas, and Texas. Applications are pending in Colorado, Missouri, Arkansas, and New Mexico. Eventually, Feist intends to operate on an intrastate basis in all 48 states. No applications for authority have been denied and no formal or informal complaints have been made against Feist according to Sparkman.

Feist has approximately 20 employees. Sparkman testified Feist's practice is to place a corporate presence in the states where it has operating authority. There are approximately 1500 subscribers currently using Feist's long distance services. Those subscribers are generating monthly in the neighborhood of 1.5 million minutes worth of calling. The Applicant emphasizes business subscribers, but would provide service to a residential subscriber if the request is made.

Prior to joining Feist, the majority of people on Feist's staff worked for American Communications which was purchased by United Telecom (now a part of MCI). After leaving MCI, they joined Feist. Feist's chief engineer, for example, has 17 years of experience ranging from AT&T to American Communications, to United Telecom to MCI to Feist.

If the Commission approves Feist's application, the company will resell inbound 800 service, outbound long distance services, dedicated service, and calling cards as a non-facilities based (switchless) reseller of interexchange services in Nebraska. Feist does have switches in Wichita, Kansas, Oklahoma City, Oklahoma, but will not install a switch in Nebraska. There is no plan to construct facilities in Nebraska. AllNet and WilTel will serve as the underlying long distance carriers. Both of these carriers are certificated in Nebraska to provide intrastate long distance service. The Applicant does not require advance payments or customer deposits. Sparkman testified Feist will do its billing in-house.

The financial exhibits provided by were prepared by Feist's accountant in October, 1992. The balance sheet shows the following: As of September 30, 1992, Feist's total assets and total liabilities and equity amounted to \$867,666. This includes assets of 493,000 for machinery and equipment (including the switches) and \$312,000 in accounts receivable (not accrued, solely for the month of September). On the liabilities and equity's side of the ledger, the company's figures are somewhat skewed by the impact of a non-compete agreement in the amount of \$205,167. The non-compete agreement expense will end in April, 1995. Sparkman testified that \$34,194 had been eliminated as of September 30, 1992. In the method of accounting used by the Applicant, the company is recognizing the entire \$205,166 against its income. This decreases the net income of the company on a yearly basis.

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The income and expenses statement covers a five month period from April, 1992 (when Feist began operations) to September 30, 1992.

	September	Year to Date
Income		
Revenue L.D.	\$189,772	\$ 983,435
Revenue 800#	26,097	95,506
Additional	4,079	25,935
TOTAL	\$219,948	\$1,104,876
 Gross Margin on Sales	 \$113,905	 \$ 539,431
 Total Operating Expenses	 \$ 70,741	 \$ 384,634
 Net Operating Income	 \$ 43,164	 \$ 154,797
 Total Other Income and Expense	 \$-33,985	 \$ -339,452
 Net Income	 \$ 9,178	 \$ -184,654

Sparkman pointed out that the YTD net income figure is also skewed by one-time costs of \$-50,000 in start up fees and \$-86,000 for 1992 in carryover expenses when the company assumed liabilities of Switchboard Long Distance.

At the request of the Staff, Feist subsequently provided Exhibit D, a income projection statement, as a late-filed exhibit. This statement projects a total income in excess of \$5 million dollars and a net operating income of \$542,000 in 1993.

The Applicant's proposed tariff provides both flat and distance sensitive rates. Feist will file a formal tariff upon receipt of this order.

The facilities of the Applicant now in place are not providing intrastate service in Nebraska. 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.³

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.

³See Section 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-970 be, and it is hereby, granted and Feist Long Distance Service, Inc. of Wichita, Kansas 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 file a 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 4th day of May, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel A. Hewitt
Doranne D. Gay

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

Frank J. Jurek
Chairman

ATTEST:

Patricia R. G.
Executive Director