

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of West Coast Tele-)	Application No. C-973
communications, Inc., Santa Bar-)	
bera, California which seeks a cer-)	
tificate of public convenience and)	GRANTED
necessity to operate as a reseller)	
of telecommunications services in)	
the State of Nebraska.)	
)	Entered: June 16, 1993

APPEARANCES

For the Applicant

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For the Communications Department

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PRELIMINARY MATTERS

Applicant West Coast Telecommunications, Inc. ("West Coast") of Santa Barbera, California filed its application February 2, 1993. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service. The applicant's business address is noted above and its books and records are maintained at that location. CSC-Lawyers Incorporating Service Company, 1225 "L" Street, Suite 400, Lincoln, Nebraska, 68508 is West Coast's registered agent in Nebraska. Notice of the application appeared in the Omaha Daily Record February 3, 1993. No one protested the application. West Coast appeared before the Commission for a hearing, chaired by Commissioner Landis, May 17, 1993 in the Commission Hearing Room, Lincoln, Nebraska.

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:

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.

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 (part of L.B. 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

Michael W. Mlinar, Vice-President for Regulatory Affairs, testified for West Coast. He became a Vice-President approximately two months prior to the hearing. Before, he was West Coast's independent counsel for two years. Mlinar earned a bachelor's degree in Business Administration from Ft. Hays State University. He is a University of Washburn law graduate. Mlinar worked for the Kansas Corporation Commission for five years as an administrative assistant to Chairman Mike Lennon on electric, gas, and telephone issues. He also worked for US Sprint and Williams Telecommunications.

Mlinar testified, and the pleadings reflect, that the applicant seeks both interLATA and intraLATA authority. The filed application, from which the Omaha Daily Record notice is derived, 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

West Coast incorporated in California in 1989 and is a subsidiary of WCT Communications, Inc. ("WCT"). WCT was formed early in 1993 to facilitate the acquisition of a Canadian company called Ameritel, Inc. ("Ameritel") which holds a subsidiary company

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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called BTI, Inc. ("BTI"). BTI is a California company that resells shared local service in California. WCT is therefore a holding company operateing through these subsidiaries.

The applicant's corporate officers are: Richard Frockt, President and Chief Executive Officer; Martin Nason, Chief Financial Officer; Christopher Edgecomb, Vice President; Joel Wadman, Vice President; John Lustyan, Vice President;, and Mlinar. In 1993, West Coast made an initial public offering of stock. Frockt owns 33 percent of the company. Only Frockt owns more than five percent. The company currently employs 206 individuals, 80 percent of whom are located in California.

Frockt has been in the telecommunications industry virtually all of his professional career, first as a practicing lawyer and then holding various posts with other companies, including TMC Communications. Rick Henderson founded BTI. He has worked in the communications business for 20 years. Edgecomb has worked in marketing and selling Sprint's and AT&T's communications services. Nason has spent a great deal of time in senior corporate management with Vidal Sassoon. He brings the company an extensive background in financial and accounting practice. John Kane joined West Coast after working at Computer Communications Technologies, Inc. He is the operations officer and has worked in the communications field for 20 years. His background is engineering and finance and he handles West Coast's network operations.

West Coast offers interstate long distance resale service in all 50 states. For intrastate service, the company is currently authorized in Oregon, Washington, California, Nevada, Arizona, Utah, Texas, and Illinois. Applications are pending in the rest of the country with the exception of five unnamed states. West Coast is also applying for intra-Puerto Rico authority and already retains transporter authority to Canada and Mexico. No state commission has rejected a West Coast application nor has the company been subject to a formal complaint proceeding.

If granted authority to operate in Nebraska, West Coast will initially offer basic MTS type services, including 1-Plus and 800 services. A calling card service is also available. West Coast resells WilTel, MCI, and Sprint depending on the state and the service offered by the underlying carrier available in that state.

In order for West Coast to profitably resell long distance service, it competes for the market not concentrated on by the larger underlying carriers. For example, Sprint, being a large company, concentrates more heavily on a higher profit margin customer base (subscribers with high usage calling patterns). That leaves a large sector of the marketplace available to resellers

like West Coast and smaller resellers having specific target markets. To utilize a bulk acquisition of capacity from Sprint, and then resell the service at a profit, West Coast becomes the sales and marketing arm of the larger facilities-based carrier for those markets which Sprint is either unwilling or unable to conduct business.

The agreements between the underlying carriers and West Coast are long term agreements subject to minutes of use that West Coast acquires and uses and are renegotiated at set periods of time. West Coast's rates are approximately 15 to 20 percent below AT&T's and Sprint's retail rates.

The applicant's financial information was prepared in house by West Coast's accounting staff. Joel Wadman is a CPA and prepared the exhibits at the end of 1992. One monthly income statement offered covers June, 1992. During that month, the company generated \$1.224 million in revenue. The company was left with a gross margin of \$357,520 and a total operational expense of \$275,732. This left the company with a net income of \$80,000 for June. A second income statement for the nine month period ending June, 1992 shows the company earned operating revenues of \$9.058 million. This left West Coast with a gross margin of \$2.57 million. After deducting operational expenses of \$1.907 million, the company earned a net income of \$646,216.

West Coast also provided balance sheets for the same nine month period. The company's total assets amounted to \$5.67 million including equipment and facilities worth \$2.47 million (including company-owned switches in California, Los Angeles, San Francisco, and Dallas).

Small and medium business subscribers are West Coast's primary target in Nebraska. West Coast will offer service to any subscriber, including residential subscribers, who seeks service at the established rates. The company will emphasize its efforts in the eastern part of Nebraska. West Coast markets its services through agents who use direct mail, direct telephone, and personal contacts. They do not use multi-level marketing methods and West Coast's formal policy forbids multi-level marketing.

No direct deposits or advance payments are required by West Coast of new subscribers. An 800 service is available to handle subscriber complaints. A subscriber can reserve payment on the part of the bill he or she disputes (this practice comports to the Commission's own policy). West Coast bills its subscribers through OAN, a billing company. Eventually West Coast will do its own billing.

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The rates in the proposed tariff included with the application are per minute and mileage sensitive. Mlinar testified West Coast is exploring doing away with the mileage sensitive part of the tariff.

In conclusion, Mlinar stated that competition in the inter-exchange marketplace creates many benefits to the end users of telecommunications services. West Coast will apply additional competitive pressure to existing carriers and thereby force rates closer to cost, resulting in lower rates for end users. Mlinar has no illusions about the effect of West Coast solely on rates, but stated that the aggregate impact of resellers would press rates down.

Based on his regulatory experience, Mlinar believes there is an eventual saturation point for resellers but that point is not in the near future. More and more specialty resellers seeking limited niches will enter the market.

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.

The facilities of the applicant now in place are providing interstate service. Applicant does not propose to construct facilities for use in intrastate service in Nebraska; 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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-973 be, and it is hereby, granted and West Coast Telecommunications, Inc. of Santa Barbera, California 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

³See Section 75-604.

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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 16th day of June, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Gruver
Duane D. Gray

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

Frank Landis
Chairman

ATTEST:

John R. H. H.
Executive Director