

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-981
of Telegroup, Inc., Fairfield, Iowa,)	
which seeks a Certificate of Public)	
Convenience and Necessity to oper-)	GRANTED
ate as a reseller of telecommuni-)	
cations services within the state)	
of Nebraska.)	
)	Entered: June 30, 1993

APPEARANCES

Fred Gratzon, Chairman, Pro Se
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PRELIMINARY MATTERS

Telegroup, Inc. ("Telegroup"), an Iowa-domiciled corporation, filed this application March 22, 1993. Notice was subsequently published in the Omaha Daily Record the following day as required by the Commission's rules. No protests were received. Notice of hearing was sent by the Commission's Executive Director to the applicant on May 5, 1993 and hearing was held in the Commission Hearing Room, Lincoln, Nebraska on May 27, 1993. Commissioner Landis chaired the proceeding. By this application, Telegroup seeks authority to resell intrastate interLATA and intraLATA interexchange long-distance telecommunications service in 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:

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.

Fred Gratzon testified for Telegroup. He is the company's Chairman and one of two company officers. Gratzon is a Rutgers University graduate. He holds 48.5 percent of the company stock and is an entrepreneur who founded Telegroup as a privately-held Iowa corporation in 1989. Clifford Rees is the company's President and also holds 48.5 percent of the stock. Telegroup's books and records are maintained at the business address recorded earlier in this order. Prentice-Hall is its registered agent in Nebraska.

Gratzon testified, and the pleadings are broad enough to 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 application for reseller authority does not include AOS unless specifically petitioned for in the application.²

Telegroup is a switchless reseller of long-distance telephone services offered by facilities-based interexchange carriers. Telegroup neither owns, leases, nor operates any switching, transmission, or other physical facilities in Nebraska. No such facilities will be used by Telegroup in Nebraska in providing long-distance services in the State of Nebraska. Instead, Telegroup resells AT&T Software Defined Network (SDN) and Distributed Network Services (DNS) long-distance services. Telegroup has an agreement with AT&T which permits Telegroup to buy SDN and DNS in bulk and at

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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high volume discounts normally reserved for large commercial users. This bulk volume is then resold to individual subscribers who benefit from the bulk discount. Services will be provided to commercial users 24 hours per day from any customer location in Nebraska where equal access is available to destination points in Nebraska. Telegroup also provides a long-distance calling card.

Telegroup currently provides intrastate service in Pennsylvania, Georgia, New York, California, Massachusetts, Illinois, Michigan, Ohio, New Jersey, Iowa, Indiana, Florida, Texas, North Carolina, Kentucky, South Carolina, Maryland, Tennessee, Virginia, Missouri, Wisconsin, Alabama, West Virginia, Kansas, Colorado, Oklahoma, Oregon, Minnesota, Louisiana, Washington, Mississippi, Montana, Utah, and Arkansas. Applications are pending in Arizona and Maine.

Between 8,000 and 10,000 subscribers are served across the country by the applicant. These subscribers consist of small businesses who average about \$500 a month in long distance usage. Telegroup's subscribers are generating about 10 million minutes of usage per month, according to Gratzon's estimate.

Telegroup submitted its financial information in Exhibit 4, which covers the year ending December 31, 1992. The company had total assets and liabilities and equity of \$5.8 million. Approximately \$4.57 million of that figure consisted of Accounts Receivable from subscribers. In 1992, Telegroup resold \$23.8 million worth of long distance service. After the cost of sales is deducted, Exhibit 4's income statement reveals a gross margin of \$3.6 million. This figure is further reduced by operating expenses to a net operating income of \$1.44 million. After other income and expenses, the company was left with a net income for 1992 of \$1.39 million.

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.

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,

³See Section 75-604.

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and should be granted. Addition of this applicant to the intra-state long distance interexchange market in Nebraska will expand the selection of carriers for Nebraska consumers. Telegroup's financial record appears healthy and indicates previous success in this market.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-981 be, and it is hereby, granted and Telegroup, Inc. of Fairfield, Iowa 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 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 June, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel S. Unwiller
Diane D. Gay

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

Frank Landis, Jr.
Chairman

ATTEST:

Jim R. [Signature]
Executive Director