

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. C-987
Application of Home Owners Long)
Distance, San Antonio, Texas) GRANTED AND
which seeks authority to resell) PROTECTIVE ORDER ISSUED
intrastate interexchange tele-)
communications services in)
Nebraska.) Entered: August 2, 1993

APPEARANCES

For the Applicant

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PRELIMINARY MATTERS

By application filed April 12, 1993, Home Owners Long Distance ("HOLD"), San Antonio, Texas seeks authority to provide intrastate interLATA and intraLATA interexchange long distance telecommunications services in Nebraska. At the hearing, the applicant's counsel noted a change in address which is:

Home Owners Long Distance
8000 Vantage Suite 20001
San Antonio, TX 78230

HOLD's registered agent is:

CSC-Lawyers Incorporating Service Company
1227 "J" Street
Lincoln, NE 68508

The Omaha *DAILY RECORD* published notice of the application April 13, 1993 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held July 1, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Landis chaired the hearing.

At the hearing, pre-marked exhibits were offered and accepted. These exhibits included a copy of the applicant's articles of incorporation, certificate to do business in Nebraska as a foreign corporation, and a proposed tariff. The applicant also moved in its petition and at the hearing for a protective order applicable to its financial documents. The filed application, upon which published notice was based, does not seek a certificate to provide alternate operator service ("AOS"). We note this Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.

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) due to the terms of the Modified Final Judgement 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 Nebraska Legislature in L.B. 835 (LAWS 1986) because interexchange services (which include resellers) in §86-805 are referenced to in §75-604. For this reason, the

¹We observe that a late-filed amendment to add AOS to the authority sought in the original application is an inadequate solution; the published notice of the application would then not accurately reflect the authority sought by the applicant.

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.

Commission distinguishes between intraLATA and interLATA resale in deciding reseller applications.

Joseph Webb, President of HOLD, testified on its behalf. He is the company's chief operating officer and all financial, marketing, sales, and operations decisions pass through his office before they are approved. Webb's employment in the telecommunications field dates back to 1980. He was President and chief operating officer of Metromedia Long Distance and was employed prior to that by US Telephone in Dallas, Texas.

According to the application and as described in Webb's testimony, HOLD is a switchless reseller which provides interstate, interexchange long distance telephone service using the MCI's nationwide network. Intrastate interLATA and, where permitted, intraLATA telecommunication services are also offered on a resale basis to the public. HOLD proposes to offer intrastate service throughout Nebraska. The company employs no switches or network facilities of its own because those are or will be provided by its underlying carriers. The applicant provides service to commercial enterprises and residential customers. HOLD plans to offer pre-subscribed 1+ resale of long-distance message toll service ("MTS") and calling card services. HOLD's customers will be able to access the directory assistance and operator assistance services of HOLD's underlying carriers.

To provide non-facility based resale services, HOLD follows MCI's tariff provisions to meet the telecommunications traffic usage volumes necessary to qualify for discounts available under that tariff. HOLD pays the underlying carrier for such usage and re-bills HOLD's customers, at the same time, passing on to them a share of the higher discounts made possible by the pooling of their traffic with other HOLD customers.

HOLD is a privately held Texas corporation which was incorporated in April, 1989. The company's corporate officers are Webb and Ed L. Dunn (Secretary, Treasurer). These two individuals as well as James A. Young are its directors. No state commission has rejected an application by HOLD for reseller authority, nor has a formal complaint ever been filed against HOLD by another state utility or public service commission. According to Webb, HOLD provides intrastate long distance resale in the continental 20 to 25 states to approximately 45,000 customers.

The applicant intends to provide service throughout Nebraska to residential subscribers. There is no plan to locate equipment or personnel within the state.

Webb testified the tariff offered by HOLD is flat rated. There is no mileage sensitivity in the tariff. Instead, prices

are day and hourly rated. No other state regulatory agency has required the applicant to procure a performance bond. The applicant does not require advance payments or deposits.

In its application and at the hearing, HOLD moved that the Commission enter a protective order sealing the financial exhibit because of its proprietary nature. Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.01A establishes the Commission may provide safeguards for proprietary information.³ The applicant's financial documentation was prepared in-house by HOLD's own accountant, CPA David Meckler in February, 1993. The updated financial statements entered into the record as Exhibit 7 are for the year ending December 31, 1992. The balance sheet for the company shows total assets for that period of \$1.491 million mostly in the form of accounts receivable. Its total liabilities and equity total the same amount and the majority of that figure consist of accounts payable to MCI.

The exhibit also shows that HOLD generated \$7.048 million in income for the same period after expenses (including salaries) had a net income of \$56,318.

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.

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 as modified.

Since no physical plant will be installed in Nebraska pursuant to a grant of authority, there is no duplication of facilities and no consideration of that issue pursuant to section 75-604 is required. Finally, the motion for a protective order is reasonable and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-987 be, and it is hereby, granted and Home Owners Long Distance of San Antonio, Texas is hereby authorized *to operate as a resale carrier of intra-*

³ Rule 003.01A states: "The Commission shall maintain safeguards for the protection of proprietary information, included but not limited to, protective orders and limited distribution of the proprietary information."

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state interexchange interLATA and intraLATA telecommunications services within the State of Nebraska. The financial information found in the company's balance sheet and income statement, including the information filed originally in the application is sealed pursuant to a protective order incorporated herein.

IT IS FURTHER ORDERED that 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 FURTHER ORDERED that this order be, and it is hereby, made the Commission's official certificate of authority to furnish the service described and authorized herein.

MADE AND ENTERED at Lincoln, Nebraska this 2nd day of August, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Duane D. Gay

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

Frank Landis
Chairman

ATTEST:

Pat R. H.
Executive Director