

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)	Application No. C-988
Hertz Technologies, Inc., Oklahoma)	
City, Oklahoma, which seeks a cer-)	GRANTED AND PROTECTIVE
tificate of authority to operate)	ORDER ENTERED
as a reseller of telecommunications)	
services in the State of Nebraska.)	
) Entered: July 22, 1993	

APPEARANCES

Scott Floyd, Pro Se
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PRELIMINARY MATTERS

Hertz Technologies, Inc. ("HTI") of Oklahoma, City, Oklahoma filed its application for intrastate interexchange long distance reseller authority in Nebraska on April 14, 1993. The Commission published notice of the application in the Omaha Daily Record the following day. No one protested the application. HTI appeared before the Commission for hearing on June 16, 1993. Commissioner Landis chaired the hearing in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. The applicant's registered agent in Nebraska is the CT Corporation System, 206 South 13th St., Lincoln, Nebraska, 68508.

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), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph Co., 569

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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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 is a Delaware corporation and received its certificate to do business as a foreign corporation in Nebraska December 30, 1992. HTI's shares are owned by its parent corporation, Hertz Corporation which is the nation's largest auto rental agency. HTI is capitalized not only by its interstate resale business (and the anticipated intrastate sales) but by the resources of Hertz Technologies. HTI currently provides resold interstate interexchange long distance telephone service in most of the 48 contiguous United States and an interstate tariff is filed with the FCC. As of April 1, 1993, HTI is authorized to provide intrastate telecommunications services in Texas, Oklahoma, New Jersey, Idaho, and North Dakota and also provides service in the non-regulated states of Virginia, Arizona, Colorado, Montana, Michigan, Tennessee, and Utah.

Neither HTI, its officers, directors, or shareholders have been the subject of a formal complaint or enforcement proceeding involving its business operations.

Hertz Corporation purchases telecommunications services in high volume to provide telecommunications support to its various offices. High volume allows Hertz Corporation to negotiate favorable rates. HTI then resells the excess capacity. If granted authority in Nebraska, HTI intends to resell Message Telecommunications Service ("MTS"), Wide Area Telecommunications Service ("WATS"), direct dial 800 Service, data transmission service, and other business-oriented telecommunications services.

HTI is a switchless reseller and does not own or lease the network facilities which transmit the services. It intends to resell the services of AT&T and Wiltel, Inc.

The applicant's witness, Scott Floyd, testified that the applicant seeks only interLATA authority. As noted above, we distinguish between interLATA and intraLATA authorization and,

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based on Floyd's testimony, we restrict our consideration to the former. 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

Floyd is HTI's Marketing Director. He oversees the day to day operations of the company's marketing, service planning, negotiations with underlying carriers, and customer service. He testified that because Hertz is a switchless reseller, there are no additional equipment costs associated with expanding its services in Nebraska. The cost factors at the intrastate level parallel HTI's experience at the interstate level and no significant cost increases are anticipated by the addition of intrastate service.

At the hearing and in application, HTI requested that the financial information placed in the record receive confidential treatment. Commission Rule 003.01A provides such protection at our discretion. The motion is granted and included in this order is a protective order sealing the financial information (Ex. 4). Generally, HTI shows assets and liabilities and equities of almost \$12 million and revenues of almost \$38 million as of December 31, 1992. After the usual costs and expenses, the company netted nearly \$1.6 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.

The facilities of the applicant now in place are providing interstate service. The 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.

O R D E R

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.

³See Section 75-604.

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IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-988 be, and it is hereby, granted and Hertz Technologies, Inc. of Oklahoma City, Oklahoma is hereby authorized to operate as a resale carrier of intrastate inter-exchange interLATA telecommunications services within the state of Nebraska. This certificate does not authorize the resale of intrastate long distance telecommunications services on an intraLATA basis.

IT IS FURTHER ORDERED that, pursuant to Title 291 NAC Ch.5, Rule 003.01A, the financial documents made a part of this record (Ex. 4) are sealed by protective order as requested by the applicant in its application.

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 22nd day of July, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel S. Mueller
Duane D. Gay

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

Frank E. Landis, Jr.
Chairman

ATTEST:

James F. Munnelly
Executive Director