

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-996
of Cherokee Communications, Inc.,)	
Jacksonville, Texas which seeks)	GRANTED AND PROTECTIVE
authority to offer pay telephone)	ORDER ISSUED
telecommunications services within)	
the state of Nebraska.)	Entered: October 13, 1993

APPEARANCES

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PRELIMINARY MATTERS

This matter comes before the Commission pursuant to an application filed May 28, 1993. Notice of the application was published in the Omaha Daily Record June 3, 1993. Applicant Cherokee Communications, Inc. (Cherokee), Jacksonville, Texas, is a Texas corporation seeking authority to operate as a provider of pay telephone telecommunication services, interexchange long distance resale, and alternate operator services (AOS) in Nebraska. Applicant's business address is Cherokee Communications, Inc., P.O. Box 549, Jacksonville, Texas, 75766 and its telephone number is (903) 586-6671. The applicant's registered agent is CT Corporation System, 206 South 13th Street, Lincoln, Nebraska, 68508.

The applicant's witness testified, and the pleadings reflect, from that the applicants seeks both interLATA and intraLATA long distance interexchange reseller authority. The filed application, upon which the Omaha Daily Record notice was based, also seeks authority to provide alternate operator service. We observe that the Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.¹

¹We observe that a late-filed amendment to add AOS to the application is an inadequate solution; the published notice of the application would not thereafter correctly reflect the authority sought.

There were no protests filed to this application. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska on September 10, 1993 with appearances as shown. Commissioner Landis chaired the proceeding. At the hearing, exhibits A thru J were admitted into evidence. These exhibits include a copy of the applicant's articles of incorporation, certificate to do business in Nebraska as a foreign corporation, and its proposed tariff.

OPINION AND FINDINGS

Upon consideration of the application, the governing statutes and rules², the evidence deduced 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 Judgment issued in the AT&T divestiture case. United States v. American Telephone and Telegraph Co., 552 F.Supp. 131 (D.D.C. 1982), aff'd sub nom. California v. United States, 460 U.S. 1001 (1983) United States v. American Telephone and 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 statute. This was recognized by the Legislature in LB 835 (Laws 1986) because interexchange services (which include resellers) in section 86-805 are referenced to in section 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA long distance resale when deciding reseller applications.

Mr. Jerry Beddow testified for the applicant. He is the company's Chief Operating Officer. He has a Bachelor of Science degree in industrial engineering from Southern Methodist University, Dallas, Texas and has 26 years of experience in both engineering and management. The last 15 of those years have been in the telecommunications industry with companies such as Plantronics, Honeywell, Intellicall, and Cherokee Communications. He currently manages Cherokee's field operations. This includes managing the company's district offices in the states where Cherokee operates. He is also responsible for the financial and accounting

²Interexchange reseller applications are governed by Neb. Rev. Stats. 75-604 and 86-805 (1990 and 1987 REISSUES respectively) and Title 291 NAC Ch. 5, Rule 003.12.

organization of the company. He handles all of Cherokee's federal and state regulatory responsibilities.

Cherokee is a privately-held pay telephone vendor furnishing interstate and intrastate telecommunications services to end users (individuals who use the company's telephones and the company's services to place calls). The company's telecommunications services are available to end users at customer locations through the company's pay telephones via resold transmission facilities procured from interexchange carriers and local exchange carriers. The services include both interLATA and intraLATA interexchange service as well as local pay telephone service. Cherokee's services are furnished to patrons of convenience stores, hotels, shopping malls, airports, jails, grocery stores, truck stops, and other institutions which provide paid telephone service to public end users. A special service is furnished to federal, state, and local prison facilities which provide paid telephone service to inmates on a timed basis.

Cherokee has no facilities or communications network, other than its pay telephones and related equipment which are installed pursuant to an agreement on a customer's premises. In the agreement, the customer authorizes Cherokee to deal with local exchange carrier regarding the removal of existing telephone equipment and installing telephone lines to its pay telephones. The agreement also provides for the payment of a "location commission fee" by Cherokee to the customer based on a portion of the revenues generated from complete calls originating from the company's pay telephones located on the customer's premises.

The company's pay telephone telecommunications services are programmed into the hardware located on the customer's premises. Coinless pay telephones will be offered on the premises of federal, state, and local prisons where potential usages by inmates participating in institutionally authorized telephone programs are available. Such telephones will be for the purpose of originating non-cent paid calls (calls placed from pay telephones where the end user charges the price of the call on a calling card or has the call billed to the receiving party at numbers within the North American dialing plan only). All other traffic, including calls to company numbers, 911, 0-, and 800 calls may be blocked where the prison authorities stipulate the service maybe restricted to toll calls only. Coin pay telephones will also be offered to prisons under the same conditions, except cent paid calls (calls where the end user deposits a coin into the telephone to pay the price of the call in advance) are also permitted.

Cherokee is billed for all line charges made by interexchange carriers and local exchange carriers. Cherokee bills its end users through billing service companies with whom Cherokee either directly, or indirectly, has billing and collection agreements. Cherokee also pays local exchange carriers various charges associated with credit billings such as account validation charges and charges for collection services. Charges

made by Cherokee to end users who use its pay telephones for communications between points within the state are made in accordance with the regulations and rates contained in Cherokee's tariff. In the application, Cherokee states that public interest will be served by the approval of this application for the following reasons:

1. Cherokee's proposed service will use existing communications facilities more efficiently.
2. Competition within the intrastate communications market will bring the following long term benefits to Nebraska telephone users:
 - a. Alternative services of the highest quality;
 - b. Innovative telecommunication service in state of the art equipment;
 - c. Expanded consumer choice in billing options; and
 - d. Efficient use of existing communication resources as well as greater diversity of communication and reliability in telecommunications services.
3. Cherokee's provision of services to its customers and to end users of coin and non-coin operated telephones will facilitate the availability of credit card and third party long distance calls. The service not only provides a useful service to the public, but also promotes a more competitive and efficient use of the long distance network.
4. It provides federal, state, and local prisons with a secure telephone service for inmates. It provides inmates with the ability to place private calls without assistance or interference from prison employees.

At the hearing, Beddow testified that Cherokee uses an "intelligent payphone." This payphone is a state of the art payphone employing microprocessors to do various sophisticated diagnostics, call processing, and routing of telephone calls. This payphone is connected at a customer's premises and Cherokee leases a line under tariff from the local exchange carrier which is connected to the payphone. With this connection, Cherokee is able to route both local, interLATA, intraLATA, interstate, and international calls from the pay telephone. The Cherokee management system is located at its data processing center in Jacksonville, Texas. Every one of the pay telephones Cherokee possesses is tied to the data processing center. Cherokee uses advanced technology to monitor the status of its phones. The phone automatically calls into headquarters in Jacksonville, Texas when the coin box is full or if its internal diagnostics detect failure. Cherokee can "poll" the phone remotely to confirm its service status.

Cherokee personnel visit each phone every 14 days to collect, test, and clean the phone. Any service call during the interim is dispatched to a technician and 90% of the service calls are cleared by the next business day. Service calls can be answered 24 hours a day, seven days a week, by dialing 211 or zero from the pay phone. Cherokee maintains a data center in

Jacksonville that is redundant as an auxiliary power generator to keep its telephone system and computer up at all times.

As part of this application, Cherokee plans to provide alternate operator services. Cherokee employs in its pay phone a technology that has become widely available within the industry called "in store forwarding." Ordinarily, a patron goes to a pay phone and dials 0+ his or her destination number. The call goes to an operator and a bong tone is issued. When the patron hears the bong tone, he or she dials in a calling card number and after it is validated, the call is completed. This is different from how a Cherokee pay phone operates. With a Cherokee payphone, if the patron dials 0+ the destination number, Cherokee issues a bong code inside the pay phone and brands it "Cherokee Communications." If the patron puts in the calling card number, Cherokee validates the number and that it is a billable account. Assuming it is, Cherokee launches the call across the network to the called party. In practice, Cherokee has turned a 0+ call into a 1+ call. Cherokee collects all the billing information inside the pay phone for a more efficient use of the telephone company's facilities because the line is not tied up while patrons are dialing in digits. The same is true for collect calling. If a patron dials 0+ the destination number from a Cherokee pay phone, Cherokee will issue a bong tone from inside the phone and brand it "Cherokee Communications." Cherokee waits two seconds and if the patron has not started entering the calling card digits, Cherokee will by voice say "To place a collect call, press 1 now." The patron presses "1" on the pay phone and Cherokee asks for his or her name. After the patron makes identification, Cherokee uses its computer system to confirm the number called is a billable number, i.e., to see whether it is blocked. If it is a billable number, Cherokee launches the call across the network. When the called party answers, Cherokee states, "This is Cherokee Communications, you have a long distance collect call from" Cherokee follows this by stating, "To accept this collect call press one now." Because Cherokee handles these types of calls inside its pay phone, Cherokee considers itself an operator service provider as well as a pay phone provider and for this reason requests authority to provide alternate operator services.

A patron may do one of two things if he or she does not wish to use the services previously described. One is to dial "0" only. This tells the pay phone the patron wants a live operator for assistance. The call is then routed directly to the operator service company contracted with by Cherokee and which is certified in Nebraska to handle operator service calls. In this case, Cherokee has a service contract with Intellical Operator Services, Inc. (Intellical). Secondly a patron may dial "0" plus the number. If the caller does not place a calling card number into the system, a recording comes on saying "To place a collect call, press one now". If this is not done, the Cherokee system waits two seconds and, if nothing more is added to the system, the call is routed to the Intellicall operator.

A patron wishing to use a long distance carrier other than the one Cherokee resells, can do so by dialing that long distance carrier's access code. A caller can also reach any 800 collect number from a Cherokee pay phone. Cherokee complies with the requirements for operator service providers as specified in the Telephone Operator Consumer Services Improvement Act of 1990 as regulated by the FCC. A patron cannot reach his or her preferred carrier by dialing 1 + 0 + the carrier's access code plus zero where the local telephone company has not converted to equal access.

Cherokee now operates approximately 6,000 pay phones and has been in business since 1988. Cherokee has a very extensive technical support staff. It has a district office in Cedar Rapids, Iowa which manages technicians for Iowa, Nebraska, and Minnesota. Cherokee currently has two technicians who are assigned to cover Nebraska. One technician is stationed in Omaha and one in Des Moines, Iowa.

Cherokee trains its technicians for two weeks before they are assigned to a service route. Training includes pay phone service and repair as well as customer relations. Each technician is visited by the district manager once per quarter. The manager rides with the technician to verify his or her ability and to provide any additional training. The technician drives a fully stocked vehicle so most repairs are done with one visit.

As per the Commission's operator services rules, Beddow testified that Cherokee, as an operator service provider, will identify itself, through Intellical, in the course of an operator assisted call in sufficient time for a patron to terminate the call without incurring a charge. This satisfies Commission Rule 003.16A Title 291, NAC Ch. 5. In addition, Cherokee posts or displays in a prominent fashion a notice that its rates are not regulated and containing instructions for registering a complaint with the operator service provider. The notice will include the carrier's name, detailed complaint procedures and procedures to access another company's operator. The operator service provider's rates will be available to the caller upon request in compliance with Rule 003.16B. Cherokee will comply with Rule 003.16C which states that all operator service providers must provide adequate emergency service to callers dialing zero.

Cherokee has authority to operate in the following states: Arizona, Iowa, Minnesota, New Mexico, Texas, Montana, Wyoming, Utah, and Colorado. Neither Cherokee nor its officers or shareholders have had any complaints filed against them within the last two years. Cherokee owns no transmission facilities. It intends to offer services to its customers using MCI's facilities. The applicant does not plan to construct any telecommunication facilities of its own.

At the hearing, Cherokee's attorney moved that the financial exhibits be sealed pursuant to a protective order. Staff made no

objection to the motion. Title 291 NAC Ch. 5, Rule 003.01A provides: "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." The hearing officer, Commissioner Landis, granted the motion.

Cherokee has annual sales in the \$20 million range and equity of over \$3 million. Cherokee considers itself one of the largest payphone companies in the United States. Its 6,000 pay phones compare to the largest pay phone company in the nation which has approximately 20,000 pay phones. Cherokee is the fourth largest pay phone company in the United States out of approximately 400 or so, according to Beddow's testimony. In addition, we note generally, Cherokee's asset base has grown from \$11.8 million to approximately \$13 million for the period December 31, 1992 to March 31, 1993. We also note for the record that the company has a positive net income in six figure range for the period ending March 31, 1993.

The applicant's proposed tariff which is part of the application is in accordance with the Commission's rules and regulations. The tariff for long distance resale is mileage sensitive on a minute by minute basis. It is not time of day sensitive. The tariff contains establishes a service charge for calls placed by calling card, credit card, or by collect calling.

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.

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. A protective order should be placed on this application sealing the financial information contained herein.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-996 be, and it is hereby, granted and Cherokee Communications, Inc., Jacksonville, Texas is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA long distance telecommunications services within the state of Nebraska. Cherokee Communications, Inc. is also authorized to provide alternate operator

³See section 75-604.

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services on an intrastate interexchange interLATA and intraLATA basis in Nebraska.

IT IS FURTHER ORDERED that the financial information identified in Exhibit H be, and it is hereby, sealed pursuant to a protective order incorporated herein.

IT IS FURTHER ORDERED that the applicant file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the State of Nebraska on a combined intrastate - interstate basis, the investment of 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 is hereby, made the Commission's official certificate of authority to furnish the service offered herein as a common carrier and alternate operator service provider.

MADE AND ENTERED at Lincoln, Nebraska, this 13th day of October, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Huwiler
Duane D. Gay

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

John R. Landis
Chairman

ATTEST:

Dijt R. King
Executive Director