

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Midwest Fibernet, Inc. of Mattoon, Illinois for authority to provide intrastate telecom- munications resale services in Nebraska.) Application No. C-1000))) GRANTED and) PROTECTIVE ORDER ISSUED)) Entered: September 28, 1993
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APPEARANCES

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PRELIMINARY MATTERS

By application filed June 29, 1993, Midwest Fibernet, Inc. ("Midwest"), Mattoon, Illinois seeks to provide intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. Midwest's principal office is: 121 South 17th Street, Mattoon, Illinois, 61938 (217.235.4456) and its registered agent is: Prentice-Hall Corporation System, Inc., 1900 First Tier Bank Building, 233 South 13th Street, Lincoln, Nebraska, 68508.

The Omaha DAILY RECORD published notice of the application June 10, 1993 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held August 19, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Landis chaired the hearing.

At the hearing, pre-marked exhibits 1 through 8 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 filed application, upon which published notice was based, does not seek a certificate to provide alternate operator service ("AOS"). We note that this Commission has consis-

tently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.¹

We observe that this applicant's tariff does provide rates for operator services, but these are charges for underlying services provided by the applicant's underlying long distance carrier(s).

BY THE COMMISSION

OPINION AND FINDINGS

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) as a result of the terms of the Modified Final Judgment 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 Nebraska Legislature in L.B. 835 (LAWS 1986) because interexchange services (which include resellers) in §86-805 are referenced to in §75-604. Therefore, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

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.

Mr. Wendell Moore testified on behalf of the applicant. Moore is Midwest's Vice President of Finance & Administration and External Affairs. He holds the same position with Consolidated Communications, Inc. which is Midwest's parent company through a subsidiary corporation called CNI. Midwest is privately held and was incorporated in Illinois in 1985. The company has approximately 150 employees (including those at CNI). Including, Consolidated Communications, Inc., the figure increases to over 1,000. Moore has over ten years of telecommunications experience beginning with Northern Telecom of Nashville, Tennessee. No state commission has rejected an application by Midwest for reseller authority, nor has a formal complaint ever been filed against it by another state utility or public service commission.

Midwest is a reseller organized to provide intrastate, interexchange and, where permitted, intraLATA long distance telephone services using the network facilities of underlying carriers authorized to provide such facilities. It will primarily resell its services through Wiltel and sometimes MCI and AT&T. Midwest is extending its service to meet the intrastate needs of its customers in several states and is filing the requisite applications in all of these states, including Nebraska. At present, Midwest will employ no network facilities of its own in Nebraska because those are or will be provided by Midwest's underlying carrier. In some states, Midwest operates as a switched reseller, but the services offered in Nebraska will be switchless.

To provide resale services, Midwest arranges under the provisions of the tariffs of its underlying carrier or carriers the commitments to meet the telecommunications traffic usage volumes necessary to qualify for the highest levels of discounts available under those tariffs. Midwest is responsible for all payments to the underlying carrier for such usage. Midwest then re-bills its customers, at the same time passing on to them a share of the higher discounts made possible by having pooled their traffic with other Midwest customers. Moore projected that Midwest's rates would be approximately ten to 20 percent lower than Wiltel's.

Regarding billing disputes, a Midwest customer must notify Midwest of his or her dispute within 30 days of receiving the bill. The customer may request, and Midwest will provide, a detailed review of the disputed amount. The undisputed portion of the bill must be timely paid. If, after investigation by Midwest, there is still a dispute, Midwest informs the customer that it may contact the state commission to seek relief.

Midwest has approximately 10,000 customers nationwide. According to Moore's testimony, these customers are generating approximately 20 million minutes of toll traffic per month.

Midwest is certificated as an intrastate long distance reseller in New York, New Jersey, Florida, Missouri, Illinois, Kentucky, and Indiana. Midwest also operates in several states which do not regulate resellers.

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, Midwest moved that the Commission enter a protective order sealing the financial exhibits because of their proprietary nature. Title 291 NAC Ch. 5, Rule 003.01A establishes the Commission may provide safeguards for proprietary information.³ The applicant's financial documentation was prepared by in-house by Midwest's staff. The balance sheet for the company shows total assets for the period ending December 31, 1992 of \$1.406 million. The exhibit also shows that Midwest has shown strong growth in revenues over the last year. For example, it had a total of \$93,380 in net income as of February 28, 1993 for the previous 12 months ending that date. Midwest more than doubled that figure during the first two months of 1993, including \$51,588 in February, 1993.

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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1000 be, and it is hereby, granted and Midwest Fibernet, Inc. of Mattoon, Illinois is hereby authorized *to operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the State of Nebraska.* The financial information identified as Exhibits 6 and 7 are sealed pursuant to a protective order incorporated herein.

³Rule 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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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 FURTHER ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity to furnish the service authorized herein.

MADE AND ENTERED at Lincoln, Nebraska this day of 28th day of September, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel D. Drwiler

//s//Rod Johnson

//s//Frank E. Landis, Jr.

//s//James F. Munnelly

James F. Landis, Jr.
Chairman

ATTEST:

David R. Lang
Executive Director