

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Phoenix Network,
Inc., San Francisco, California
which seeks amendment to its Certificate of Public Convenience and
Necessity to additionally provide
intrastate intraLATA interexchange
telecommunications service in
Nebraska.

Application No. C-1005
GRANTED AND CERTIFICATE
NO. C-880 REVOKED

Entered: August 16, 1993

BY THE COMMISSION

On June 25, 1993, Phoenix Network, Inc. ("Phoenix") of San Francisco, California filed an application seeking to amend its original certificate to provide intrastate intraLATA, as well as interLATA, interexchange telecommunications services in this State. Phoenix's corporate name, principal place of business, and telephone number are:

Phoenix Network, Inc.
One Maritime Plaza, Suite 2525
San Francisco, California 94111
415.981.3000

Notice of the application was published in the Omaha Daily Record June 28, 1993 in accordance with the Commission's procedural rules. No one protested the application. We therefore process this matter using the Commission's modified procedure rule.¹

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, and being fully advised, 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 F.Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

¹Title 291 Neb. Admin. Regs. Ch. 1, Rule 018.03

²Neb. Rev. Stats. 75-604 and 86-806 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.

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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 in Sec. 86-805 are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA interexchange services.

Approval of this application will not substantially change the current intrastate telecommunications long distance environment because Phoenix will merely join a growing number of long distance resellers offering service in the intrastate LATAs. There will be no duplication of services since no facilities will be installed. The fact no one protested this application lends support to the view that the members of this particular market recognize and largely, if not totally, accept competition as a by product of the de-regulation resulting from passage of LB 835 (LAWS 1986). Our interest is not so much in maintaining a competitive balance but, instead, a high quality of service to Nebraska consumers.

Based on the contents of the application and the past operations of Phoenix under its original certificate, the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1005 be, and it is hereby, granted and Phoenix Network, Inc. of San Francisco is authorized to operate as a long distance provider of intrastate interexchange interLATA and intraLATA telecommunications services within the state of Nebraska.

IT IS FURTHER ORDERED that the findings and the order in Application No. C-880 are hereby incorporated by reference and the certificate in C-880 is revoked. The applicant's authority to operate in Nebraska as an interexchange long distance carrier is therefore governed by this order and the certificate issued herein.

IT IS FURTHER ORDERED that the Applicant shall continue to 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.

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IT IS FURTHER ORDERED that, prior to offering service pursuant to the certificate, the Applicant shall file an updated and correct tariff reflecting the change in the authority 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 16th day of August, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel L. Mueller
Duane D. Gay

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

Frank E. Landis, Jr.
Chairman

ATTEST:

John R. King
Executive Director