

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-1007
of Executone Information Systems,)	
Inc. of Darien, Connecticut which)	GRANTED
seeks authority to operate as a)	
reseller of long distance ser-)	
vices within the State of Neb-)	
Entered: September 14, 1993	

APPEARANCES

For the Applicant

Faye Restaino, Director of
Network Services
6 Thorndial Circle
Darien, CT 06820
203.655.6500

For the Communications Dept.

Jeffrey P. Goltz, Esq.
Legal Counsel, NPSC
300 The Atrium Building
1200 "N" St. Box 94927
Lincoln, NE 68509
402.471.3101

PRELIMINARY MATTERS

By application filed June 28, 1993, Executone Information Systems, Inc. ("Executone") of Darien, Connecticut seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. Executone's principal office and the location where its books and records are kept is noted above and its registered agent is the Prentice-Hall Corporation, 1900 FirstTier Bank Building, 233 South 13th Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha *DAILY RECORD* June 29, 1993 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held August 11, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown; Commissioner Urwiller chaired the proceeding.

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 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, 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 that statute. This was recognized by the Nebraska Legislature when it approved L.B. 835 (LAWS 1986) because interexchange services (which include resellers) governed in part by Neb. Rev. Stat. §86-805 (Reissue 1987) are referenced to in Neb. Rev. Stat. §75-604 (Reissue 1987). Therefore, the Commission distinguishes between intraLATA and interLATA resale when considering reseller applications.

¹ Interexchange 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.

Ms. Faye Restaino, the applicant's Director of Network Services, appeared before the Commission. Restaino manages the day to day responsibilities of the company's reseller business. She has worked for the company for ten years and prior to that worked for one of the companies which joined in a merger to create the applicant.

The applicant incorporated in Virginia in 1988. It is a publicly held corporation, the corporate officers of which are Alan Kessman (President and CEO), Stanly M. Blau (Vice Chairman), Michael W. Yacenda (Executive Vice President & Chief Financial Officer), Barbara C. Anderson (Vice President, General Counsel & Secretary), and a number of other Vice Presidents. Goldstar Telecommunications Co., Ltd has a 6.85 percent interest in the company's shares. Entities associated with the Hambrecht & Quist Group have a 20.31 percent share and Entities Associated with Edmund H. Shea, Jr. have a 10.63 percent interest.

Executone is in the business of designing, manufacturing, marketing, installing, and servicing voice and data communications systems for business and is especially active in developing specialized communications equipment and services for businesses. It has 38 sales and service offices around the country. Executone sells this customer premises equipment ("CPE") and its services under Executone, Isoetec, IDS, and Infostar brand names through a nation-wide network of company-owned direct sales and service offices and independent distributors. Executone seeks reseller authority in Nebraska to complement its above-described services.

At the hearing, the applicant's financial statements, the certificate to do business as a foreign corporation in Nebraska, and a copy of its articles of incorporation were made a part of the record.

Restaino testified (and the application reflects) that the company seeks both intraLATA and interLATA reseller authority. The filed application, upon which the DAILY RECORD notice is based, *does not* seek a certificate to provide alternate operator service ("AOS"). We note this Commission has consistently held an application for a reseller certificate does not include AOS unless specifically petitioned for in the application.²

The applicant proposes to operate as a non-facilities based reseller of Sprint's long-distance service in Nebraska. No future facilities in Nebraska are contemplated nor will any employees be located within this state. The applicant will resell inbound and outbound 1+ service, 800 service, dedicated service, and travel cards.

To be profitable as a reseller, Executone has entered into a three year contract with Sprint. The contract requires Executone to commit to a specific volume of traffic in order to qualify for a discount. This discount allows Executone to resell Sprint's services to Executone's customers at rates below the underlying carrier's tariff rates for intrastate Nebraska calling. The difference between the rate paid by the customers and the discount received from Sprint provides the margin of profit. Restaino projected subscriber savings in the range of five to eight percent below the Sprint tariff rates.

No state commission has rejected an Executone application for reseller authority, nor has a formal complaint been filed

²We observe that a late-filed amendment to add AOS to the application is an inadequate solution; the previously published notice of the application would not then accurately reflect the authority sought in the application.

against it by any state commission for its reseller activities. As of the hearing date, the applicant was operating as a reseller in the following states: Alabama, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Louisiana, Maryland, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and in the District of Columbia. The authority sought here in Nebraska is the same as obtained in those states. The applicant does not propose to provide service of a different type in this state.

Restaino testified the applicant has approximately 5,000 subscribers to its service across the country in states where it currently operates. These subscribers are generating nine million minutes of usage monthly.

The applicant bills reseller customers under its own name and in-house. There are no intermediary billing agents involved. The applicant receives its call detail records on magnetic tape from the underlying carrier for processing the customer billing.

The financial information provided by the applicant was marked as Exhibits 7 and 8 and was prepared by the Arthur Anderson certified public accounting firm. These financial statements cover the entire Executone company and not just its reseller operations. Restaino, relying on Exhibits 7 and 8, testified to the following:

	1993*	1992	1991
Assets	\$179.773M	\$182.279M	\$180.203M
Liabilities & Stockholders' Equity			

Application No. C-1007

Page -6-

Revenues	70.392M	279.581M	266.589M
Gross Profit	26.517M		
Net Income	.723M	3.332M	1.017M

 *1993 figures are for January through March, 1993.

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

This is a well established company with a great deal of financial support due to its other services. Coupled with the demonstration that the company is competently operated and has the requisite expertise, we believe the evidence warrants approval of the application.

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

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1007 be, and it is hereby, granted and Executone Information Systems, Inc. of Darien, Connecticut be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services in Nebraska.*

³See §75-604.

Application No. C-1007

Page -7-

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 applicant file an updated and corrected 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 14th day of September, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel G. Urviller
Duane D. Gay

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

Paul J. Jundt
Chairman

ATTEST:

D. R. Krueger
Executive Director