

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application )	Application No. C-1027
of US Wats, Inc., Bala Cynwyd, )	
Pennsylvania which seeks a certi- )	
ificate of public convenience and )	GRANTED
necessity to operate as a reseller) )	
of telecommunications services in )	
Nebraska. )	
) Entered: March 16, 1994	

APPEARANCES

For the Applicant	For the NPSC Staff
Michael Bohl, Director of	Jeffrey P. Goltz, Attorney
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PRELIMINARY MATTERS

By application filed September 7, 1993, US Wats, Inc. ("USW"), Bala Cynwyd, Pennsylvania seeks authority to operate as a reseller of intrastate interLATA interexchange telecommunications services in Nebraska. USW'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 September 8, 1993 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held December 10, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Landis chaired the proceeding. The delay in processing this application to its final conclusion occurred because the applicant was not timely in its filing of certain late-filed exhibits.

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 rules<sup>1</sup>, 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 Modification of 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) ruled that long distance service is also governed by that statute. This was recognized by the Nebraska Legislature when it approved LB 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). Consequently, the Commission distinguishes between intraLATA and interLATA resale while considering reseller applications.

Mr. Michael Bohl testified for the applicant. Bohl has been Director of Operations since June, 1993. He previously worked as a network engineer at Air Products and Chemicals and three years with MG Industries as its Director of Communications. Finally, Bohl worked for four years COMAC, a reseller and aggregator. Bohl earned a B.S. degree in Information Systems and Business from Kings College and an M.B.C. in Production Management from St. Joseph's University.

USW incorporated in New York in 1989. It is a publicly held stand-alone corporation, the corporate officers of which are Aaron Brown (President and Director), Stephen Parker (Executive Vice President and Director), and Ward Shultz (Chief Financial Officer). Brown, Parker and Murray Goldberg are the company's major stockholders.

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<sup>1</sup> 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.

At the hearing, the applicant's financial statements, its certificate to do business as a foreign corporation in Nebraska, and a copy of its articles of incorporation were provided and made part of the record. Several late-filed exhibits including the company's most recent audited financial statement were also filed and made part of the record.

Bohl testified that the company only seeks interLATA authority. The company does not seek intraLATA authority and therefore intraLATA authority will not be considered in our deliberations. 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 that an application for a reseller certificate does not include AOS unless specifically petitioned for in the application.<sup>2</sup>

The applicant proposes to operate as a non-facilities based reseller of AT&T and WilTel long-distance services in Nebraska. No future facilities in Nebraska are contemplated. The company has approximately 50 employees. The applicant will offer customers 1+ long distance service, 800 calling service, and travel cards. There will be no facilities in Nebraska and USW is solely dependent upon the facilities of the underlying carrier(s). USW does its own billing direct to its customers.

To be profitable as a reseller, USW has entered into a contract with AT&T.<sup>3</sup> The contract requires USW to commit to a specific volume of usage in order to qualify for a substantial discount which allows American to resell for a profit. The applicant then charges its customers 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 AT&T provides the margin of profit. A similar arrangement exists with WilTel. Bohl projected customer savings of about ten to 12 percent below the AT&T rate.

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<sup>2</sup>We 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.

<sup>3</sup>The Federal Communications Commission still regulates AT&T as a dominant common carrier. Therefore, a tariff still controls AT&T's rate structure. Tariff No. 12 permits AT&T and a reseller such as the applicant to enter into the type of agreement described here.

No state commission has rejected a USW application for reseller authority. As of the hearing date, the applicant held intrastate operating authority in forty states and intends to eventually operate in all 48 continental states. 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.

Bohl testified the applicant has approximately 6,000 customers to its service across the country in states where it currently operates. These subscribers are generating about \$2 million per month in toll.

The most recent financial information provided by the applicant is marked as late-filed Exhibit F and was compiled in-house and subsequently audited by Baratz & Associates, a New Jersey CPA firm which conducted its examination March 1, 1993. The exhibit provides information for the company's finances as of December 31, 1992 and shows the following:

Total Current Assets	-	\$4.056 million
Property and Equipment	-	\$ .300 million
Total Other Assets	-	\$ .083 million
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Total Assets	-	\$4.439 million
Total Liabilities and Shareholders		
Equity	-	\$4.439 million
Revenues	-	\$10.443 million
Cost of Sales	-	\$ 7.325 million
Gross Profit	-	\$ 3.118 million
Expenses	-	\$ 2.845 million
Net Income	-	\$ .239 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. 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.<sup>4</sup>

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<sup>4</sup>See §75-604.

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This is a relatively new company; it has turned the corner and is now operating in the black. Coupled with the demonstration that the company is competently operated and has the requisite expertise, we believe the evidence is strong enough to warrant 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-1027 be, and it is hereby, granted and US Wats, Inc. of Bala Cynwyd, Pennsylvania be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA telecommunications services in Nebraska.*

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 16th day of March, 1994.

## NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

*Daniel G. Unwiller*  
*Duane D. Gay*

//s//Rod Johnson  
//s//Frank Landis, Jr.

*Frank Landis*  
Chairman

ATTEST:

*Doris R. Long*  
Executive Director