

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1029
FirstTel, Inc., Sioux Falls, South)
Dakota which seeks authority to) GRANTED
operate as a resale carrier within)
the State of Nebraska.)
Entered: February 8, 1994

APPEARANCES

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PRELIMINARY MATTERS

This application comes before the Commission pursuant to a filing made September 27, 1993 by FirstTel, Inc. ("FirstTel"), a South Dakota corporation located in Sioux Falls, South Dakota. The applicant's address is noted above and its books and records are maintained there. FirstTel seeks to operate as an intrastate interexchange reseller of interLATA and intraLATA telecommunications services in Nebraska. Its registered agent in Nebraska is Jeffrey Miller, an Omaha attorney.

The Omaha DAILY RECORD published notice of the application September 28, 1993 in accordance with the Commission's procedural rules. No one protested. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska December 7, 1993 with appearances as shown. Commissioner Landis 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 Modification of Final

¹Interexchange 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.

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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).

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 LB 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

FirstTel's witness, Richard Law, testified, and the pleadings reflect, that the applicant seeks both interLATA and intraLATA authority. The filed application, upon which the Omaha DAILY RECORD notice was based, does not seek authority to provide Alternate Operator Service ("AOS"). We observe the Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.²

Law is FirstTel's President. He formed the company and incorporated it in June, 1993. Law created a pay telephone operation in South Dakota which still operates, but which he left two years ago to undertake the current venture with FirstTel. FirstTel is a privately-held, stand-a-lone corporation. Besides Law, Mark Vanden Berge serves as FirstTel's other corporate officer in the capacity of Secretary. Law, Wallace Jansma, and Fred Thurman are its primary stockholders. The company currently employs 35 people.

FirstTel is authorized to provide intrastate long distance service in Iowa, South Dakota, and North Dakota. No state commission has denied a FirstTel application to date nor has it been subject of a formal complaint proceeding before a state commission.

FirstTel provides resold long distance telecommunications services. FirstTel's network is based on the resale of MCI and

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

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Wiltel facilities. These companies route calls through its switched network for FirstTel and, as underlying carriers, are responsible for maintenance and supervision of the network. A software program identifies the calls as FirstTel's for tracking and billing purposes. FirstTel intends to offer interexchange services primarily to business customers in Nebraska, but will also serve residential customers. Access connections to the end user may be switched or dedicated and may be provided by local exchange carriers or other access providers. FirstTel bills its customers directly based on call detail records from the underlying carriers.

FirstTel employs a similar tariff in all the states where it offers intrastate service. In Nebraska, rates will vary by time of day, call duration, and product type. The product types vary based on volume and whether the originating access is switched or special access.

As of the hearing date, Law testified that FirstTel has approximately 300 customers who generate around 25,000 minutes of usage per day. Law said that the company will probably place some employees in Nebraska but does not expect facilities here. On an intrastate calling basis, Law said FirstTel's rates will be lower than AT&T's, Wiltel's, and MCI's, but could not estimate by how much on a percentage basis.

Because the financial exhibit in the application was inadequate, the hearing officer directed Law to submit a late-filed financial statement (Exhibit 2). This document shows the following:

As of December 31, 1993

Total Assets - \$427,592

Includes a leased switch worth \$120,000 and equipment worth \$230,588.

Total Liabilities and capital - \$427,592

Includes a loss to date of \$189,971.

There is a notation that stockholders have pledged to provide \$1.5 million in capital if needed.

Exhibit 2 also contains a projected income statement for the year ending December 31, 1994. This document projects revenues of \$3.84 million and direct costs of \$3.146 million, leaving a gross profit of \$694,000. After selling expenses (salaries, taxes, travel, etc.) of \$495,000, general and administrative expenses of \$580,000, and an interest expense of \$120,000, FirstTel project the

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company will lose \$501,000 in 1994 but turn a monthly profit starting in November, 1994.

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.

Applicant proposes to construct no facilities for use in intrastate service; therefore, no existing facilities will be duplicated if this application is granted for reseller service.³

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. We note, however, that the financial records of this applicant are sketchy at best. We therefore additionally will require that an annual balance sheet and income statement be provided to the Communications Department each year for the next three years as a condition to our grant of authority.⁴

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1029 be, and it is hereby, granted and FirstTel, Inc., Sioux Falls, South Dakota is hereby authorized to operate as a resale carrier of intrastate inter-exchange interLATA and intraLATA long distance telecommunications services within the state of Nebraska.

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. The Applicant shall also file an annual balance sheet and income statement for each of the next three years.

IT IS FURTHER ORDERED that the applicant file an updated tariff prior to offering service pursuant to the certificate granted in this order.

³See Section 75-604.

⁴To begin with the year ending 1993 and due no later than April 30 of the subsequent year.

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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 8th day of February, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

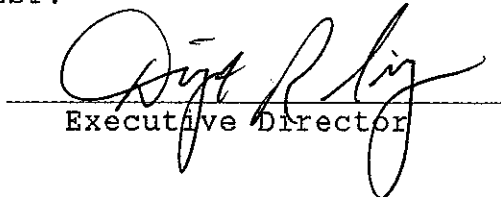
//s//Duane D. Gay

//s//Rod Johnson

//s//James F. Munnelly


Acting Chairman

ATTEST:


Executive Director