

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-1034
by CommuniGroup of K.C., Inc.,)	
of Mission, Kansas which seeks)	GRANTED;
authority to operate as a)	PROTECTIVE ORDER ISSUED
reseller of telecommunications)	
services within the State of)	
Nebraska.)	
)	Entered: January 3, 1994

APPEARANCES

For the Applicant

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For the Communications Dept.

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PRELIMINARY MATTERS

By application filed October 28, 1993, CommuniGroup of K.C., Inc. ("CGI") of Mission, Kansas seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska. CGI's principal office and the location where its books and records are kept is 6950 W. 56th Street, Mission, Kansas, 66202 (913.722.6005) and its registered agent is Donald Dunn at his business address noted above.

Notice of the application was published in the Omaha *DAILY RECORD* October 29, 1993 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held December 1, 1993 in the Commission Hearing Room, Lincoln, Nebraska 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 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.

Michael J. Ensrud, the applicant's Regulatory Analyst, appeared before the Commission. Ensrud previously worked for the GTE corporation and for the Iowa Utilities Board. He handles both administrative and legislative affairs for the applicant and CGI has employed him for the last three years.

The applicant incorporated in Missouri in 1982 previously as Trans Tel Sytems, Inc.. It is a privately held corporation, the corporate officers of which are David L. Jones (President and Director), Lem T. Jones (Chairman and Director), Gerald W. Hartman (Vice President and Director), Robert F. Chafin (Vice President and Director), Joseph D. Fail (Secretary and Director) and Walter J. Frank, Jr. (Treasurer and Director).

CGI will be a non-facilities based telecommunications reseller within Nebraska. CGI predicts that its prospective

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.

customer base in Nebraska will have similar characteristics to its customer base in Missouri and Kansas. These two states are the only states where CGI offers intrastate service at this time. CGI serves both residential and business customers. The customer base is comprised mainly of small and medium business customers, residential customers, fraternal organizations, and small governmental entities. Currently, CGI serves approximately 44,000 customers in Missouri and 15,600 customers in Kansas. Ensrud testified the applicant has approximately 60,000 subscribers to its service in Missouri and Kansas. These subscribers are generating eleven million minutes of usage on approximately 2.5 million calls per month. CGI has no plans to construct any new facilities to implement service in Nebraska. The applicant will use leased facilities.

CGI will be able provide Nebraska service through the use its own switching equipment (but which is not located in Nebraska). CGI's existing switch is a Northern Telecom DMS 250 located in Kansas City, Missouri. This switch provides CGI's telecommunications service on a 24 hours per day basis.

CGI proposes to offer MTS, WATS, Travel Service, and 800 Service. MTS is a service geared to small business and residential customers. The service is provided via switched access. The customer dials the number desired and the call is routed over CGI's leased network. WATS service is geared to medium and large business customers. The service can be initiated either via a WATS Access Line, a Dedicated Access Line or normal switched service. Travel Service is an outbound service geared for customers who are away from their primary location but who still wish to utilize CGI service. The service is provided by a combination of 800 service and switched access. 800 Service is a service where the customer can receive calls placed by others where the calling party is not billed. Instead, the party receiving the call (the customer) is billed for the cost of the call.

CGI has a staff of one director and three technicians who monitor, maintain, and upgrade its switch 24 hours per day. The director has over 11 years of experience in the telecommunications industry. The technical staff has had prolonged and continuous training from the Northern Telecom company concerning operation and maintenance of the DMS switch.

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. CGI moved the Commission to treat the company's financial exhibits as confidential pursuant to a protective order. Staff made no objection.

Ensrud 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

No state commission has rejected a CGI application for reseller authority, nor has a formal complaint been filed against it by any state commission for its reseller activities. 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.

The financial information provided by the applicant was prepared by Whitaker, Lipp & Healea, a certified public accounting firm. As noted previously, the applicant sought a protective order restricting access to this information. Title 291 NAC Ch. 5, Rule 003.01A provides the Commission may enter such an order. Generally, the financial records provided to the Commission establish CGI is profitable and has a substantial asset base on which to rely. The applicant is financially sound.

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 for its operations. 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

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.

³See §75-604.

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IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1034 be, and it is hereby, granted and CommuniGroup of K.C., Inc. dba CGI of Mission, Kansas be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA 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 the financial exhibits made a part of this docket be, and they are hereby, restricted as public records as provided by the protective order made a part of this order.

IT IS FURTHER ORDERED that 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 3rd day of January , 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel H. Unwillen
Dwain D. Gay

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

James R. Sealey
Chairman

ATTEST:

John R. King
Executive Director