

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-1035
of U.S. Long Distance, Inc., San)	
Antonio, Texas, which seeks)	
authority to operate as a resale)	
common carrier of telecommunica-)	GRANTED
tions services including operator)	
assisted services within the)	
State of Nebraska.)	
Entered: January 31, 1994	

APPEARANCES

For the Applicant

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For the Commission

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PRELIMINARY MATTERS

By application filed October 29, 1993, U.S. Long Distance, Inc. ("USLD"), San Antonio, Texas seeks authority to operate as a reseller of intrastate interLATA and intraLATA interexchange telecommunications services in Nebraska and to provide alternate operator services ("AOS"). USLD's principal office and the location where its books and records are kept is noted above and its registered agent is the CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha DAILY RECORD November 1, 1993 in accordance with the Commission's rules of procedure. No protests to the application were received. Hearing on the application was held January 7, 1994 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown; Commissioner Landis chaired the proceeding.

O P I N I O N A N D F I N D I N G S

BY THE COMMISSION

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 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, 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 and addressed by the Nebraska Legislature in L.B. 835 (LAWS 1986) because reference to interexchange resellers in §86-805 is now referenced to in §75-604.

Kenneth Melley testified for the applicant. He is USLD's Director for Regulatory Affairs. He is responsible for regulatory oversight and compliance of the company's operations in all states, and interstate and international jurisdictions. He is a graduate of North Carolina State University. After working as a stockbroker, Melley worked two years for ConTel and then joined USLD in 1990.

USLD is a Texas corporation and is a subsidiary of U.S. Long Distance Corporation, a Delaware corporation. USLD incorporated in Texas in 1986. U.S. Long Distance Corporation is also the parent corporation of Zero Plus Dialing, a Delaware corporation which provides billing services for interexchange carriers. U.S. Long Distance Corporation owns all the stock issued in behalf of USLD.

Melley stipulated in his testimony, and the application reflects, that the broad range of authority sought in the application includes application for both interLATA and intraLATA resale. USLD proposes to operate as a facilities based

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.

reseller of MCI, Allnet, WilTel, and CTG Corporation long-distance services in Nebraska. No facilities in Nebraska are contemplated nor will any employees be located here.

At the hearing, Melley offered on behalf of USLD current financial statements, a certificate to do business in Nebraska as a foreign corporation, and a proposed tariff. A copy of USLD's articles of incorporation was also provided with the application.

The filed application, upon which the DAILY RECORD notice is based, *does* seek a certificate to provide alternate operator service. We note this Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.² Melley testified about USLD's AOS service in detail and confirmed that USLD would comport itself to the Commission's AOS rules found at 003.16A of Title 291, Chapter 5. Melley stated that the company has about 44,000 private payphones across the country.

USLD is a switched based reseller of telecommunications services providing switched and dedicated interexchange services to businesses and residents across the United States. The applicant owns and operates a DEX 400 telecommunications switch based in Waco, Texas and two DEX 600 switches, one in Houston, Texas and the other in Seattle, Washington. Its operator service center is located in San Antonio and operates 24 hour per day, seven days per week. USLD has more than 350 operators and personnel in its operator services center. They provide directory assistance, rate quotes, multi-lingual services, and access to local emergency services when necessary.

To be profitable as a long distance reseller, USLD buys bulk transmission capacity at a flat rate from its underlying carrier(s). USLD then markets its service to generate enough usage from its customers in billable minutes to exceed the flat rate it is charged for the already purchased capacity. Melley testified that USLD's long distance rates (intrastate) generally are in the vicinity of 20 to 25 percent less than comparable AT&T services.

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

The applicant bills its long distance customers under its own name with monthly invoices. In some cases, USLD uses local exchange carriers for billing.

No state commission has rejected a USLD application for reseller authority or AOS, nor has a formal complaint been filed against it. At this time, the applicant has a certificate to operate as a long distance carrier in 41 states.

Melley testified that USLD's operator services earned \$34.809 million in revenues in 1992. This is more than double its \$16.719 million in 1991 operator service revenues. In 1993 (as of September 30, 1993), the company earned \$63.53 million in operator service revenues. For 1992, USLD had \$15.914 million in operator services assets and liabilities and shareholders equity. The applicant's financial documents also show that on the long distance side of the ledger, in 1991 USLD had \$3.133 million in long distance sales, \$19.214 million in 1992, and as of September 30, \$28.631 million in 1993. Melley testified the company is profitable. The financial statements filed by the applicant do not show overall net income or asset and liability figures for the applicant on a combined basis. These figures are intermixed with the figures reflecting the financial status of the holding company, U.S. Long Distance Corporation. US Long Distance Corporation's financial statement reflects that it had a net income of \$4.86 million on total operating revenues (billing services, operator services, and long distance) of \$134.126 million in 1993 (as of September 30, 1993). The holding company has been profitable since 1991 (net income then of \$1.225 million) and had a net income of \$3.972 million in 1992.

The applicant's proposed tariff offers business customers 1+ discounted toll service ("Advantage WATS"), 800 service ("Advantage 800"), and travel cards. Residential customers can subscribe 1+ service ("Family Line"), an 800 service ("Family 800") and a Family Travel Card. A detailed breakdown of charges for each of the services described previously is included in the tariff.

The applicant's proposed tariff complies with the Commission's rules and regulations. The tariff appears reasonable in light of the proposed service.

USLD 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.

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.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1035 be, and it is hereby, granted and U.S. Long Distance, Inc., San Antonio, Texas be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services and to provide alternate operator services within the State of 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 31st day of January, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel J. Gwilt
Duane D. Gay

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

ATTEST:

Digit R. King
Executive Director