

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application
of Capitol Network Systems, Inc.,
Austin, Texas which seeks to
operate as a resale carrier
of telecommunications services in
the State of Nebraska dba Capital
Long Distance.

) Application No. C-1037

) GRANTED

) Entered: February 8, 1994

APPEARANCES

For the Applicant

James Meadows, Pro Se
Director of Gov't Affairs
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For the Communications Department

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PRELIMINARY MATTERS

Capitol Network Systems, Inc. ("CNSI"), Austin, Texas filed its application November 8, 1993. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service and alternate operator services ("AOS"). The applicant's business address is noted above and its books and records are maintained at that location. CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508 is CNSI's registered agent in Nebraska. Notice of the application appeared in the Omaha Daily Record November 10, 1993. No one protested the application. CNSI appeared before the Commission for a hearing, chaired by Commissioner Landis, January 12, 1994 in the Commission Hearing Room, Lincoln, Nebraska.

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 Judgement (the "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 &

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.

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 (part of LB 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

James Meadows, Director of Government Affairs for CNSI, testified. He joined CNSI 4.5 years ago. He has a B.A. from the University of Texas. He was former Director of the Occupational Safety and Health Review Commission in Washington, D.C. and was Deputy Assistant Secretary of Labor for the Occupational Safety and Health Administration. He now lobbies the federal government, deals with state regulatory agencies and does sales work for CNSI.

Meadows testified, and the pleadings reflect, that the applicant seeks both interLATA and intraLATA authority. The filed application also seeks authority to provide 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

CNSI was incorporated in Texas in 1987 as Dallas Operator Services. It became CNSI in 1988. The company is privately held, the major stockholders of which are Robert A. Rowland, Don Simmons, and Michael Moehle. These individuals also constitute the applicant's directors and officers. Don Simmons worked for Southwestern Bell for 20 years before joining the applicant. Robert Rowland is an attorney and has been with CNSI since its inception. The mid-level managers at CNSI in many instances with 15 or 20 years telecommunications experience. Meadows testified that the company has 220 employees.

CNSI intends to offer intrastate operator-assisted services throughout Nebraska over facilities leased from other carriers. The services are designed primarily to originate at locations where users require operator assistance or alternate billing arrangements, such as pay telephones, hotels, motels, and hospitals. Using Feature Group D access or autodialers, the service enables patrons, guests, and other members of the public to complete calling card, credit card, collect, third number billed, and person

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.

to person calls from such locations. Meadows estimated that CNSI processes approximately 250,000 operator-assisted calls per month.

CNSI will provide operator services over resold facilities to transient locations. Service will be provided 24 hours per day, seven days per week. Calls will access CNSI via local exchange carrier switched access facilities. CNSI will use points of presence ("POPs") in Nebraska as aggregation points. From these POPs, calls will be routed to a centralized location in Austin, Texas for operator handling. Call termination occurs over leased fiber optic facilities and interexchange carrier switched networks.

In addition to operator services, CNSI will offer 1+ direct dialed and travel card services as Capital Network System, Inc. dba Capital Long Distance ("CLD"). CLD seeks approval of intrastate 1+ service which it intends to provide throughout Nebraska over facilities leased from other carriers. The services are designed primarily for business customers, but residential customers are also served. Using Feature Group D access or autodialers, the service enables the end user to complete direct dialed, calling card, and credit card calls. CLD will provide 1+ services over resold facilities on a 24 hours per day, seven days per week schedule. Calls access CLD via local exchange carrier switched access facilities. Meadows testified callers place approximately 100,000 calls per month over CLD's service. Sprint and WilTel are the underlying long distance carriers CLD intends to resell.

CNSI is authorized (at the time of the hearing) to provide intrastate services such as those sought in Nebraska in the following states:

Arizona	California
Florida	Illinois
Louisiana	Maryland
Missouri	Montana
New Jersey	New Mexico
New York	Oregon
Pennsylvania	South Dakota
Texas	West Virginia.

No state commission has rejected a CNSI application nor has the company been subject to a formal complaint proceeding.

In order for CNSI to profitably resell long distance service (as CLD), it competes for the market not concentrated on by the larger underlying carriers. For example, Sprint, being a large company, concentrates more heavily on a higher profit margin customer base (customers with high usage calling patterns). That leaves a large sector of the marketplace available to resellers like CNSI and smaller resellers having specific target markets. The company utilizes a bulk acquisition of capacity from Sprint,

³CNSI also operates in two states which do not require certification: Virginia and Oklahoma.

and then resells the service at a profit using those markets which Sprint is either unwilling or unable to conduct business.

The applicant's financial information was prepared in-house by CNSI's accounting staff, including Dan Tarrillion, CNSI's comptroller and Ellen Wood, its chief financial officer. Exhibit 4A was entered into the record at the hearing. This document was prepared the within the three month period preceding the hearing. It shows that CNSI total assets as of September 30, 1993 amounted to \$13.007 million, including accounts receivable of \$8.532 million and furniture and equipment valued at \$2.906 million. [Note: The company now has its own DEX 400 switch.] On gross sales for the nine month period ending September 30, CNSI sold \$29.776 million in services and was left with a gross profit of \$9.524 million. Expenses, administrative charges, and depreciation and amortization totaled \$9.784 million and left the company with a net loss of \$239,396. Meadows explained that the company has had a net positive income in past years, but that payments on its new switch have affected the company's net profitability at this time.

Small and medium business customers are CNSI's primary target in Nebraska. CNSI will offer service to any customer, including residential customers, who seek service at the applicant's tariff rates. CNSI markets its services through an in-house sales force which uses direct mail, direct telephone, and personal contacts. The company does not use multi-level marketing methods. Slamming complaints are avoided because the company uses Letters of Agency.

CNSI bills its 1+ customers through OAN, a California billing company. It also bills through local exchange carriers and can do its own billing. CNSI does not require advance payments or deposits. The rates in the proposed tariff included with the application are time of day and mileage sensitive.

In conclusion, Meadows testified that CNSI would conform its operator service operations to the Commission's rules found at Title 291 NAC Ch. 5, Rule 003.16A.

Finally, Meadows stated that competition in the interexchange marketplace creates many benefits to the end users of telecommunications services. CNSI will apply additional competitive pressure to existing carriers and thereby force rates closer to cost, resulting in lower rates for end users.

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 does not propose to construct facilities for use in intrastate service in Nebraska; therefore, no existing facilities

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will be duplicated if this application is granted for reseller service.⁴

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-1037 be, and it is hereby, granted and Capitol Network Services, Inc. of Austin, Texas dba Capitol Long Distance is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the state of Nebraska, including operator services.

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.

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

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

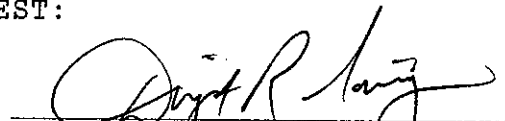
//s//Duane D. Gay

//s//Rod Johnson

//s//James F. Munnelly


Acting Chairman

ATTEST:


Executive Director

⁴See Section 75-604.