

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1049
of Petracom Corporation, Bozeman,)
Montana, seeking authority to)
operate as a reseller of inter-) GRANTED
exchange telecommunications)
services within the state of)
Nebraska.) Entered: July 12, 1994

APPEARANCES

For the Applicant

Lee Wiser, President
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(406) 585-8900

For the Communications Department

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PRELIMINARY MATTERS

Petracom Corporation, ("Petracom") of Bozeman, Montana filed its application January 21, 1994. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service. The applicant's business address is noted above, and its books and records are maintained at that location. Prentice-Hall Corporation, 1900 FirstTier Bank Building, 233 South 13th Street, Lincoln, Nebraska, 68508 is the applicant's registered agent in Nebraska. Notice of the application appeared in the Omaha Daily Record, January 26, 1994. No one protested the application. Petracom appeared before the Commission for a hearing, chaired by Commissioner Landis, April 19, 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 rules,¹ the evidence adduced at the hearing, and being fully informed¹, the Commission is of the opinion

¹Interexchange reseller applications are governed by Neb. Rev. Stats. 75-604 and 86-605 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

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 & Telephone 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 includes 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.

Lee Wiser, President of Petracom, testified. Mr. Wiser stated, and the pleadings reflect, that the applicant seeks both interLATA and intraLATA authority. The filed application does not seek 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

Petracom was incorporated in Montana in 1993. The company is privately held, the major stockholders of which are Lee Wiser, Steve Wood and Dennis Brown. Mr. Wiser and Mr. Brown serve as Directors, along with Jim Nepstad, Bruce Sunwall and William Shields. Mr. Nepstad works in the office on a daily basis.

The applicant intends to offer 1+ direct dialed and calling card services. Petracom seeks approval of intrastate 1+ service which it intends to provide throughout Nebraska over facilities leased from Allnet. The services are designed

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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primarily for affinity groups, and calls will be carried 24 hours per day, seven days a week.

Petracom is authorized (at the time of the hearing) to provide intrastate services in the following states:

Arizona	California	Colorado
Florida	Idaho	Illinois
Indiana	Iowa	Kansas
Michigan	Montana	New Jersey
New York	North Dakota	Ohio
Oklahoma	Oregon	Pennsylvania
Tennessee	Texas	Vermont
Virginia	Washington	Wisconsin
Utah		

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

The applicant's initial financial information was prepared by the independent certified public accounting firm, Veltkamp, Stannebein & Bateson of Bozeman, Montana. Pursuant to the Commission's request, financial statements depicting a three month period preceding the hearing were submitted as late-filed exhibits. This information was prepared in-house by Petracom's CFO, Michael A. Ladd. This information has not been audited. The statements reflect that the company has not been able to generate a positive net income at this time. However, this can be attributed to initial start-up costs. Furthermore, the company demonstrated that it has steadily been increasing its sales revenue. Specifically, revenue from sales in 1993 (from January to October) generated \$37,833. Whereas during the first three months of 1994, sales revenue totaled \$75,860.

At the hearing, Mr. Wiser testified that Petracom will offer telecommunication services to any interested group or individual. However, Petracom will offer the option of fundraising solely to groups that do not contradict the philosophies of existing customers. As it was explained at the hearing, fundraising is permitted because the independent marketing agent receives a smaller commission for group enrollments. Fundraising does not have to be available to each customer. However, Petracom shall not deny service based on ideological or philosophical beliefs. As a common carrier in Nebraska, Petracom has been granted the authority to serve the state as a whole. If it comes to the attention of the Commission that Petracom is denying service for unjust reasons, the certificate of authority may be revoked immediately.

Potential clients will be contacted through independent marketing agents who are paid on a commission only

basis. The company does not engage in multi-level marketing. Customer service will be provided from the headquarters in Bozeman, Montana through an 800 number.

Petracom will generate its own bills for customers. However, the bills are prepared for Petracom through Myriad Systems in Oklahoma. It is not the standard business practice of the applicant to require advance payments or deposits. However, if the company requires such payments, the tariff should reflect that 7% interest will be paid on all deposits.

In conclusion, Mr. Wiser testified that Petracom would be competitive in the market place, due to their pricing. This will apply additional pressure on existing carriers to force rates closer to cost.

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. However, the section regarding deposits and advance payments should be clarified.

Applicant does not propose to construct facilities for use in intrastate service in Nebraska; 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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1049 be, and it is hereby granted and Petracom Corporation of Bozeman, Montana is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA 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

³See Section 75-604.

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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 and corrected 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 12th day of July.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel S. Unwillen

//s//Duane D. Gay

//s//Rod Johnson

//s//Frank E. Landis

//s//James F. Munnelly

Jack Judy
Chairman

ATTEST:

Dora R. King
Executive Director