

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1054
of Budget Call Long Distance, Inc.,)
Rochester, New York, which seeks)
authority to operate as a resale) GRANTED
carrier of intrastate interLATA)
and intraLATA telecommunications)
services within the state of)
Nebraska.) Entered: May 17, 1994

APPEARANCES:

For the Communications Dept.

Hal Hasselbalch, Legal Counsel, NPSC
300 The Atrium
1200 N Street
Lincoln, NE 68509
402-471-3101

For the Applicant:

Michael Nighan, Regulatory Manager
180 South Clinton Ave.
Rochester, New York 14646
716-777-8000

PRELIMINARY MATTERS

By application filed March 2, 1994, Budget Call Long Distance, Inc., (Budget) Rochester, New York seeks authority to operate as a reseller of intrastate interLATA and intraLATA telecommunications services in Nebraska. Budget's principal office and its books and records are kept at the above address. Prentice-Hall Corporation System, Inc., 233 South 13th Street, Lincoln, Nebraska 68508 is the applicant's registered agent in Nebraska.

Notice of the application was published in the Omaha Daily Record on March 2, 1994 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held April 8, 1994 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown: Commissioner Landis chaired the proceeding.

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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 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 Nighan, Regulatory Manager for Budget Call Long Distance, appeared before the Commission. Budget is a Delaware corporation incorporated in 1992. Budget is a wholly owned subsidiary of RCI Long Distance, which in turn is a wholly owned subsidiary of Rochester Telephone Corporation. Rochester Telephone Corporation is a publicly owned corporation.

Budget's principal corporate officers are Dale M. Gregory (President and Chief Executive Officer), George A. Valenti (Secretary and Treasurer), and Lynn J. Hartrick (Vice-President). The corporate officers of Budget are also corporate officers of Rochester Telecommunications Services group. Mr. Gregory began working with Rochester Telephone in 1972 and has been extensively involved in telecommunication services since that time. Mr. Valenti is a certified public accountant and joined Rochester Telephone in 1985. He assumed his current position in October

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.

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1990. Mr. Hartrick began working with Rochester Telephone in 1969 and in 1992 was named division vice-president. 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.

Nighan 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 that an application for a reseller certificate does not include AOS unless specifically petitioned for in the application.²

Budget is not seeking 1+ or operator services as this time. The applicant intends to provide service originating from any location in Nebraska served by an equal access end office and terminating to points located throughout the state of Nebraska. Budget currently uses MCI, WilTel, and/or Allnet as its underlying carriers.

Nighan testified that Budget seeks to offer customers casual calling. Casual calling is providing the capability to dial five extra digits to gain access to a specific carrier. By simply dialing the Budget Call numbers, the customer can access Budget's services.

Budget is currently registered to operate in Illinois, Maryland, New Jersey, Ohio, Pennsylvania, South Dakota, and Virginia. Applications are pending in Alabama, Connecticut, Indiana, Minnesota, Mississippi, and Wisconsin. Budget is scheduled to provide international service beginning December 25, 1994. No formal complaints, investigatory matters, or investigatory proceedings involving the applicant have been initiated.

In order for Budget to profitably resell long distance service, it primarily competes in the market not concentrated on by larger underlying carriers. For example, Budget plans on targeting customers that are low volume users of long distance. Traditionally a Budget call subscriber spends between three to five dollars a month on long distance service. Budget proposes to offer small usage customers savings that would ordinarily not be available to them from large carriers.

² We 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.

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Budget submitted a balance sheet into the record at the hearing. It reflects total assets of \$16,589,894 for 1993. Nighan testified that Budget is projecting to earn \$1,900,000 during the first twelve months of operations in Nebraska. Total corporate revenues for 1994 are projected to be \$67,500,000. Budget will market its services through direct mail. The company does not and will not utilize multi-level marketing methods.

Budget primarily bills its customers through a third party, Zero Plus Dialing, Inc. It also renders bills through local exchange carriers. The rates in the proposed tariff included with the application are time of day and mileage sensitive.

Finally, Nighan stated that competition in the interexchange market place creates many benefits to the end users of telecommunication services. Budget will apply additional competitive pressure to existing carriers and thereby force rates closer to cost, resulting in lower rates for end users.

The applicants 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 will be³ 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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1054 be, and it is hereby, granted and Budget Call Long Distance, Inc., Rochester, New York, 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 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

³ See §75-604.

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equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that 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 17th day of May, 1994.

Commissioners Concurring:

Duane D. Gay

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

NEBRASKA PUBLIC SERVICE COMMISSION

Frank E. Landis, Jr.
Chairman

ATTEST:

James F. Munnelly
Executive Director