

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1062
of NOSVA, Limited Partnership,)
Bethesda, Maryland, who seeks to) GRANTED
operate as a resale carrier of)
telecommunications services in)
the State of Nebraska.) Entered: June 27, 1994

APPEARANCES

For the Applicant

Neal B. Bobys, President
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For the Communications Department

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PRELIMINARY MATTERS

NOSVA, Limited Partnership, ("NOSVA"), Bethesda, Maryland filed its application March 17, 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 registered agent in Nebraska is CSC-Lawyers Incorporating Service Company, 1225 L Street, Suite 400, Lincoln, Nebraska 68508. Notice of the application appeared in the Omaha Daily Record, March 18, 1994. No one protested the application. NOSVA appeared before the Commission for a hearing, chaired by Commissioner Landis, May 17, 1994 in the Commission Hearing Room, Lincoln, Nebraska.

BY THE COMMISSION

Upon consideration of the application, the governing statutes and rules,¹ the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

¹ Interexchange 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.

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 & 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. 238, 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.

Neal Bobys, President of NOSVA, testified. He has been involved in the telecommunications industry for four years. The filed application reflects that NOSVA is seeking both interLATA and intraLATA authority. It has not been requested in the application for authority to provide AOS. We observe the Commission has consistently held an application for reseller authority does not include² AOS unless specifically petitioned for in the application.

NOSVA was registered in Maryland as a partnership in 1993. The general partner of the company is NOS Communications of Virginia, Inc. The limited partners, each owning 49.5% of the partnership, are Samuel Delug and Robert Lichtenstein. They have been in the telecommunications field for over five years each. Both limited partners engage in management of the company, but most operations are handled by Neal Bobys.

NOSVA intends to offer 1+ direct dialed and calling card services. It will provide service throughout Nebraska over facilities leased from WilTel. NOSVA works with WilTel through

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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Affinity Network, Inc. of California. Affinity Network purchases large quantities of traffic from WilTel, and Affinity then offers service to NOSVA.

The applicant is authorized to provide intrastate services in the following states:

Alaska	Florida
Idaho	New Jersey
Oregon	Pennsylvania
Texas	Washington

Applications are currently pending in 28 states. No state commission has reject a NOSVA application, nor has the company been subject to a formal complaint proceeding.

The services are designed primarily for small to medium sized business customers. However, residential customers are also served. Bobys testified that NOSVA is currently selling approximately one million minutes per month, and that sales are increasing at a rate of 50,000 minutes each month. NOSVA markets its services through an independent sales agency, which uses direct mail, direct telephone, and personal contacts. The company does not engage in multi-level marketing.

The applicant's financial information was prepared by the independent accounting firm of Buchbinder, Tunick and Company. Accrual basis statements were submitted pursuant to the Commission's request, and we note these statements were not audited or reviewed. The statements reflect the company gained a net income of \$145,558 for the period February 19, 1993 to December 31, 1993.

Customers are able ask questions regarding billing or register complaints through a toll free number. NOSVA bills its customers through Digital Communications of America, (DCA), an Oklahoma billing company. The company does not require deposits, but according to the tariff the company retains the prerogative to collect advance payments if deemed necessary. Bobys testified under oath that NOSVA will not collect deposits or advance payments; therefore, the tariff should be amended accordingly.

The rates in the proposed tariff, included with the application, are time of day and mileage sensitive. Overall, the tariff is in accordance with the Commission's Rules and Regulations and seems 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 be duplicated if this application is granted for reseller service.

In conclusion, Bobys testified that NOSVA will enhance competition, and will pressure existing carriers to keep their rates low. Bobys also stated NOSVA's certification provides the opportunity to better utilize existing facilities in Nebraska.

Finally, Bobys expressed that NOSVA would abide by the Commission's Rules and Regulations. We take this opportunity to comment on the relationship that NOSVA has demonstrated with the telecommunications reseller, NOS Communications, Inc. (NOS).

As explained by the applicant's legal counsel, NOS Communications, Inc. is operated as a separate business entity from NOSVA. However, Samuel Delug and Robert Lichtenstein are shareholders in both companies, and the president of both NOS and NOSVA is Neal Bobys. NOS and NOSVA each contract with Network Services Center, Inc. (NSC) of Bethesda Maryland for "back office", day-to-day administrative duties. Therefore, this Commission feels a substantial relationship exists between the businesses.

NOS was certified to operate as a reseller in Nebraska in 1992. However, for two subsequent years, NOS has failed to timely file their Annual Reports with the Commission. A 1993 report was filed, but only after Commission staff expressed that (1) the NOS certificate was going to be revoked and (2) the NOSVA application was being denied.

Therefore, be it clearly conveyed in this order that the Nebraska Commission will not tolerate this conduct in the future. If NOSVA does not comply with the Commission's Rules and Regulations, including prompt filing of the Annual Report, this certificate will be revoked immediately.

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.

³See Section 75-604.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1062 be, and it is hereby granted and NOSVA, Limited Partnership of Bethesda, Maryland 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 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 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 27th day of June, 1994.


NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

//s//Rod Johnson

//s//James F. Munnelly


//s//Daniel G. Urwiller


Vice Chairman

COMMISSIONERS DISSENTING:

//s//Duane D. Gay

ATTEST:


Executive Director