

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. C-1076  
MFS Intelenet of Nebraska, Inc. of )  
Parsippany, New Jersey seeking au- )  
thority to operate as a resale common ) GRANTED  
carrier of intrastate interLATA and )  
intraLATA telecommunications services)  
within the state of Nebraska. ) Entered: October 11, 1994

APPEARANCES:

For the Applicant

Robert Berger, Attorney  
Swidler & Berlin  
3000 K St., N.W., Suite 300  
Washington, D.C. 20007  
(202) 424-7635

Eric Anderson, Attorney  
Fraser, Stryker et al.  
500 Energy Plaza; 409 S. 17th St.  
Omaha, NE 68102

Joseph Kahl  
Director of Regulatory Affairs for MFS Intelenet  
6 Century Drive, Suite 300  
Parsippany, NJ 07054

For the Communications Department

Deonne Niemack, Staff Counsel  
300 The Atrium, 1200 N Street  
P.O. Box 94927  
Lincoln, NE 68509  
(402) 471-3101

PRELIMINARY MATTERS

MFS Intelenet of Nebraska, Inc. (MFSI-NE) of Parsippany, New Jersey filed an application with the Commission on May 11, 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. Notice of the application appeared in the Omaha Daily Record, May 13, 1994. Interventions to the application were received from GTE, US West, United Telephone Co., Lincoln Telephone & Telegraph, the Nebraska Telephone Association, Arapahoe, Cozad Curtis and Keystone-Arthur Telephone Companies.

The applicant amended its original application to clarify that it was not seeking authority to provide local exchange service. The modified application was filed with the Commission on June 15, 1994. Subsequently, all motions to intervene were withdrawn with the exception of the intervention filed by Mr. Jeffrey Smith on behalf of the Arapahoe, Cozad, Curtis and Keystone-Arthur Telephone companies.

MESI-NE appeared before the Commission for a hearing, chaired by Commissioner Landis, September 27, 1994 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Mr. Smith was not in attendance at the hearing, and did not protest the application.

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<sup>1</sup>, 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 & 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.

Joseph Kahl, Director of Regulatory Affairs for MFS Intelenet, the parent company of MFS Intelenet of Nebraska, testified. Prior to joining MFS, he served in a similar capacity with Metromedia Communications, prior to its merger with LDDS Communications, Inc. Mr. Kahl testified, and the pleadings reflect, that the applicant seeks both intraLATA and

---

<sup>1</sup> Interexchange resellers 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.

interLATA 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<sup>2</sup> AOS unless specifically petitioned for in the application.

MFS Intelenet of Nebraska is a subsidiary of MFS Intelenet, Inc. which is a subsidiary of MFS Communications Company (MFSCC). MFSCC is headquartered in Omaha, Nebraska and is owned by Kiewit Diversified Group and is also publicly traded over NASDAQ. The principal officers and directors of MFSI- NE are Royce Holland, Chairman, C.E.O. and Director and Kirby Pickle, President, C.O.O. and Director.

MFSI-NE intends to offer intrastate services throughout Nebraska over facilities leased from WilTel. Initially, the company will offer telecommunications services in the state's metropolitan areas. Expansion is expected to occur statewide. The applicant will target small and medium sized businesses as customers; however, service will be provided to all interested individuals. Customers are able to call a toll free number, 24 hours a day, for assistance.

Billing will be processed by an outside company; however, the MFS name will appear on the invoices. Advance payments and deposits may be required as provided in the proposed tariff. Mr. Kahl stated the company would comply with all Commission Rules and Regulations regarding deposits and advance payments.

The applicant is certified to conduct business in 35 states and no state commission has rejected an MFSI-NE application. Further, no formal complaints have been filed against the applicant.

Financial information was provided to the Commission in the application. Specifically, the parent company of MFS Intelenet, MFS Communications Company, submitted its latest Form 10K which was filed with the SEC. The report reflects the company has ample resources to provide telecommunications services and will be adequately financed to provide services in Nebraska.

---

<sup>2</sup>We 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.

The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and Regulations. The tariff appears reasonable in light of the proposed service.

In conclusion, Mr. Kahl testified that MFSI-NE will provide additional competition in the telecommunications field which will create many benefits for end users. MFSI-NE will apply additional competitive pressure to existing carriers and thereby force rates closer to cost.

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-1076 be, and it is hereby, granted and MFS Intelenet of Nebraska, Inc., of Parsippany, New Jersey 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 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.

Application No. C-1076

Page 5

MADE AND ENTERED at Lincoln, Nebraska this 11th day of  
October, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

*Daniel G. Unwiller*  
*Duane D. Gay*

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

*Paul Sanders*  
Chairman

ATTEST:

*[Signature]*  
Executive Director