

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. C-1082  
U.S. Digital Network, L.P., of )  
Manassas, Virginia seeking authority)  
to operate as a resale carrier of ) GRANTED  
intrastate interLATA and intraLATA )  
telecommunications services within )  
the state of Nebraska. ) Entered September 13, 1994

APPEARANCES:

For the Applicant

Joseph Pollock  
President & General Partner  
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For the Communications Department

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PRELIMINARY MATTERS

U.S. Digital Network, L.P., of Manassas, Virginia filed its application June 8, 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, June 10, 1994. No one protested the application. USDN appeared before the Commission for a hearing, chaired by Commissioner Landis, August 24, 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<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

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<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.

of Final Judgement (the "MEJ") 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 Pollock, President and General Partner at USDN, testified. He has been involved in the telecommunications industry since 1963. He has worked with GTE, South Telephone Systems and Carolina Communications. Mr. Pollock testified, and the application reflects that the company seeks both intraLATA and interLATA 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.<sup>2</sup>

USDN was incorporated in 1993 in Virginia, and is a privately held company. Capitol Communications Gateway (CCG), another reseller, was also started by Mr. Pollock in 1989. USDN enabled CCG to diversify and expand its services. The companies, though having similar officers and partners, are completely distinct.

USDN intends to offer intrastate services throughout Nebraska over facilities leased from other carriers. The company will utilize a bulk acquisition of capacity from LDDS (formerly WilTel). USDN will offer 1+ service and calling cards.

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<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 applicant will target customers in the business community, however they will provide service to residential customers as well. The prime customer would be businesses with a monthly long distance bill between \$50 and \$3000. Mr. Pollock testified that USDN will conduct marketing through independent agents who are paid on a commission basis. Telemarketing will not be used, rather the agents will work primarily through referrals. Mr. Pollock also stated the applicant does not engage in slamming or multi-level marketing.

The 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.<sup>3</sup>

At the hearing, Mr. Pollock stated USDN is working on becoming certified in 48 states, excluding Hawaii and Alaska. Accordingly to testimony, USDN is authorized to conduct business in 46 states. Further, Mr. Pollock stated that no state commission has rejected a USDN application, nor has the company been subject to a formal complaint proceeding.

USDN bills its customers directly; however, billing is prepared by Compu-Com. The company does not require advance payments or deposits; however, Mr. Pollock stated and the application reflects, USDN will follow all Commission's Telecommunications Rules regarding deposits and advance payments.

Financial information was provided to the Commission in the application, as well as at the hearing. This information was prepared by an independent CPA firm and by in-house staff. The statements reflect USDN is in good financial standing, and will be able to competently provide service.

Customers are able to call a toll free number for assistance with complaints. Assistance will be available from 8:00 a.m. to 8:00 p.m., five days a week.

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.

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<sup>3</sup>See Section 75-604.

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In conclusion, Mr. Pollock testified that USDN will be an extremely competitive reseller in the communications field. In turn, this will apply additional pressure on existing carriers to bring their rates closer to cost, resulting in lower rates for end users.

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-1082 be, and it is hereby, granted and U.S. Digital Network, L.P. of Manassas, Virginia 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 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.

MADE AND ENTERED at Lincoln, Nebraska this 13th day of September, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

*Daniel G. Unwille*

//s//Duane D. Gay  
//s//Rod Johnson  
//s//Frank Landis, Jr.  
//s//James F. Munnelly

*James F. Munnelly*  
Chairman

ATTEST:

*James F. Munnelly*  
Executive Director