

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1098
TotalTel USA Communications, Inc. of)
Clifton, New Jersey, seeking author-)
ity to operate as a resale common) GRANTED
carrier of telecommunications serv-)
ices within the state of Nebraska.) Entered: December 6, 1994

APPEARANCES:

For the Applicant

Richard Scheps
Dir. of Engineering
150 Clove Road
Little Falls, NJ 07424

For the Communications Department

Deonne Niemack, Staff Counsel
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509

PRELIMINARY MATTERS

TotalTel Communications Inc., (TotalTel) of Little Falls, New Jersey filed an application with the Commission on August 18, 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 has been changed from Clifton, NJ to Little Falls, NJ and is noted above. Notice of the application appeared in the Omaha Daily Record, August 19, 1994. TotalTel appeared before the Commission for a video conference hearing. The proceeding was chaired by Commissioner Urwiller on November 29, 1994 in the Commission Library, 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 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

¹Interexchange 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.

Application No. C-1098

PAGE TWO

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.

Richard Scheps, Director of Engineering for TotalTel, testified. Mr. Scheps stated, and the pleadings reflect, that the applicant 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.²

TotalTel was originally incorporated in 1959 in New Jersey as Faradyne Electronics Corp. In 1991, the company changed its name to TotalTel Communications. It is a publicly traded corporation. Its officers are Warren Feldman, President/CEO; Solomon Feldman, Treasurer; Thomas P. Gunning, Controller; and Deanna Gencarelli, Secretary.

The applicant intends to offer intrastate services throughout Nebraska over facilities leased from other carriers, such as AT&T, MCI, Sprint or Wiltel. Primarily, TotalTel will offer services to businesses. Strong efforts will be made to market to businesses in Nebraska that have affiliate offices in the New York area. TotalTel markets its products through an agency program, an internal sales force and telemarketing.

TotalTel receives billing information from the underlying carrier and processes the information in-house. The bills are printed by a vendor; however, TotalTel's letterhead is used.

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.

Application No. C-1098

PAGE THREE

For questions regarding bills or for customer service, the company provides a toll-free 800 number for assistance 24 hours a day.

The applicant intends to apply for certification in all states and has not been denied a certificate of authority. Further, no formal complaints have been filed against the company. At this time, approximately 5,000 to 6,000 customers are served by TotalTel.

Financial information was provided to the Commission in the application. The statements reflect the company is in good standing. Due to stronger marketing efforts made during the past year, sales have increased dramatically. Furthermore, substantial investments have been made in equipment and in a new facility which will greatly assist the business.

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. Scheps testified that TotalTel will offer comparable products at very competitive prices. Due to the company being relatively small, TotalTel is able to respond to its customers on a personal level. Mr. Scheps stated TotalTel is a successful business in the northeastern United States and the company's goal is to extend that service nationwide.

Based on the testimony, the exhibits, and the proposed tariff, the applicant provided the requisite information, possesses adequate financial resources, and is technically competent to provide services. 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-1098 be, and it is hereby, granted and TotalTel Communications, Inc., of Little Falls, New Jersey 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.

Application No. C-1098

PAGE FOUR

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 6th day of December, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel G. Driville

Chairman

//s//Duane D. Gay

//s//Rod Johnson

//s//Frank E. Landis

//s//James F. Munnelly

ATTEST:

John B. Stevens

Deputy Director