

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1104
Touch 1 Communications Inc., of At-)
more, Alabama seeking authority to)
operate as a resale common carrier) GRANTED
of telecommunications services within)
the state of Nebraska.) Entered November 10, 1994

APPEARANCES:

For the Applicant

Linda Farr
Mgr. of Regulatory Affairs
100 Brookwood Rd.
Atmore, AL 36502
(205 368-8600

For the Communications Department

Deonne Niemack, Staff Counsel
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PRELIMINARY MATTERS

Touch 1 Communications Inc., (Touch 1) of Atmore, Alabama filed an application with the Commission on September 2, 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, September 8, 1994. Touch 1 appeared before the Commission for a hearing, chaired by Commissioner Landis, October 25, 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, 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.,

¹ 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.

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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.

Linda Farr, Manager of Regulatory Affairs, testified. Ms. Farr has been with the applicant for 1 1/2 years and has been involved in the telecommunications industry for approximately twelve years. Ms. Farr testified, and the pleadings reflect, 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 include² AOS unless specifically petitioned for in the application.

Touch 1 was incorporated in 1994 in Alabama. Its directors are James Corman, William Corman, Tara Wiggins, Bobbie Mack and J. Richard Miller. James Corman serves as the company's President, William Corman acts as Vice-President and Tara Wiggins serves as Secretary/Treasurer.

Touch 1 intends to offer intrastate services throughout Nebraska over facilities leased from other carriers. Specifically, the applicant proposes to provide 1+ presubscribed service and a calling card.

Touch 1 will market its services through an independent telemarketing firm, Pro-Mark, in Wynot, North Dakota. Welcome packages, containing information about the company and its services, are provided to new customers. All new subscribers are verified by an independent third-party and by in-house

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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auditors to ensure that the transfer was valid and that the customer is happy with the change in service.

Billing will be provided by local exchange companies; however, the applicant will provide some in-house billing for certain products. Touch 1 will prepare and compile the bills for the local companies. Advance deposits and payments are not required. Customers are able to reach Touch 1 at a toll-free telephone number for assistance with complaints.

The applicant is applying to become certified in several states. Currently, applications have been approved in six states. No state commission has rejected a Touch 1 application. Further, no formal complaints have been filed against the company.

Financial information was provided to the Commission in the application. Touch 1 has received much financial assistance pursuant to a transaction that has been completed with LDDS. The corporation, Touch 1 Inc., was originally formed in May 1989. It operated for two years until LDDS purchased Touch 1 Inc.'s customer base for \$5,000,000. The equity gained pursuant to that transaction will assist the newly organized company, Touch 1 Communications Inc., grow and offer satisfactory service to the public.

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, Ms. Farr testified that Touch 1 will provide additional competition in the telecommunications field in Nebraska. The addition of another interexchange common carrier will help lower costs for consumers and will also improve the quality of telecommunications services in the state. Ms. Farr stated Touch 1 monitors the competitors' rates daily in order to ensure their subscribers are receiving the lowest possible rates.

Based on the testimony, the exhibits, and the proposed tariff, it appears the applicant has 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-1104 be, and it is hereby, granted and Touch 1 Communications Inc. of Atmore, Alabama is hereby authorized to operate as a resale carrier of intrastate

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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 10th day of November, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel G. Unwille

Chairman

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

ATTEST:

John Burdick

Executive Director