

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1110
LECNet, Inc., a subsidiary of Tele-)
phone Electronics Corp., of Jackson,)
Mississippi seeking authority to ob-)
tain a Certificate of Public Conven-)
ience and Necessity to operate as an) GRANTED
intrastate interexchange carrier of)
intraLATA and interLATA telecommuni-)
cations services, including operator)
services within the state of Nebraska) Entered November 29, 1994

APPEARANCES:

For the Applicant

John McGowan
Dir. of Carrier Relations
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(601) 352-2888

For the Communications Department

Deonne Niemack, Staff Counsel
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PRELIMINARY MATTERS

LECNet, Inc. (LECNet) of Jackson, Mississippi filed an application with the Commission on September 19, 1994. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service. The applicant also seeks authority to provide alternate operator services. LECNet's business address is noted above. Notice of the application appeared in the Omaha Daily Record, September 21, 1994. LECNet appeared before the Commission for a hearing, chaired by Commissioner Landis, November 10, 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 rules¹, the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

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.

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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.

John McGowan, Director of Carrier Relations, testified. He has been employed with the applicant since its inception and with the parent corporation since 1991. Mr. McGowan testified, and the pleadings reflect, that the applicant seeks both intraLATA and 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 include² AOS unless specifically petitioned for in the application.

LECNet Inc. is a privately-held, wholly-owned subsidiary of Telephone Electronics Corporation of Jackson, Mississippi. LECNet was incorporated on January 18, 1993 in Mississippi. Its officers and directors are Elmer Smither, Jr., President/Director; Walter J. Frank, Vice-President/Director and Joseph D. Fail, Secretary/Treasurer and Director.

LECNet intends to offer intrastate services throughout Nebraska over facilities leased from other carriers, such as MCI and Sprint. Specifically, the applicant proposes to provide services to payphones, hotels, motels and condominiums. Services to be offered include 1+ and alternate operator service.

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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Billing will be provided by a separate billing company, O.A.N.. According to the proposed tariff and pursuant to testimony given at the hearing, advance deposits and payments are not required. Customers are able to call a toll-free number for assistance with billing complaints. LECNet will provide wholesale service back to its own organization, as well as to outside organizations. The applicant will utilize direct marketing to sell its services to other interexchange carriers (IXC's). For example, some IXC's may not have the equipment to offer AOS and/or hotel/motel services. Therefore, through direct calling, LECNet will solicit other IXC's for additional business.

Mr. McGowan testified the applicant is currently certified to conduct business in approximately 38 states and no state commission has rejected a LECNet application. Efforts are being made to expand the business nationwide. No formal complaints have been filed against the company.

Financial information was provided to the Commission in the application, as well as in the form of a late-filed exhibit. Specifically, the parent company, Telephone Electronics Corp., offered financial statements demonstrating its financial ability to operate LECNet. The statements were prepared internally by Bob Healea, the Chief Financial Officer and certified public accountant.

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. McGowan testified that LECNet will provide quality service to its customers, as the company was founded by local exchange carriers. Furthermore, the services of LECNet will expand the available options for other interexchange carriers which will ultimately benefit end users. Providing these services at a competitive rate will improve the quality of telecommunications services in the state.

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-1110 be, and it is hereby, granted and LECNet Inc. of Jackson, Mississippi is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications

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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.

MADE AND ENTERED at Lincoln, Nebraska this 29th day of November, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel G. Uiviller
Duane D. Gay

Mary J. Sander
Chairman

ATTEST:

John B. Baird
Deputy Director

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