

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1120
One to One Communications, Inc. of)
Mobile, Alabama seeking authority to)
operate as a resale carrier of intra-) GRANTED
state interLATA and intraLATA tele-)
communications services within the)
state of Nebraska.) Entered: December 6, 1994

APPEARANCES:

For the Applicant

Henry A. Rivas, Jr.
Vice-Pres. of Reg. Affairs
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For the Communications Department

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PRELIMINARY MATTERS

One To One Communications, Inc., (One To One) of Mobile, Alabama filed an application with the Commission on October 19, 1994. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service, including operator services. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, October 21, 1994. One To One appeared before the Commission for a hearing, chaired by Commissioner Urwiller, November 29, 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:

Nebraska was divided into three Local Access Transport Areas ("LATAs") as a result of the terms of the Modification of

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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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.

Henry Rivas, Vice-President of Regulatory Affairs, testified. Mr. Rivas joined the company August 1, 1994. Mr. Rivas 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 include AOS unless specifically petitioned for in the application.²

One To One was incorporated in 1983 in Utah. Its officers are Nicholas Elliott, President/CEO; Jon D. Leath, Vice-President/COO; Peter LaRose, Vice-President/CFO and Debra DeVito, Secretary.

One To One intends to offer intrastate services throughout Nebraska over facilities leased from other carriers. Specifically, the applicant proposes to provide 1+ service, 800 service and travel cards to residences, businesses, hotels, motels and pay phones.

The applicant will market its product through telemarketing. A business team will also be utilized to directly solicit business customers and people interested in obtaining pay phones. Multi-level marketing is not 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.

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Billings will appear on customers' local exchange carrier bills. For questions regarding bills or for customer service, the company provides a toll-free 800 number for assistance.

The applicant has applied to conduct business in all states and has not yet been denied a certificate of authority. Further, no formal complaints have been filed against the company.

Financial information was provided to the Commission in the application, as well as in a late-filed exhibit. The statements reflect the company has made substantial improvements over the last three years and is moving towards profitability.

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. Rivas testified that One To One 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.

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-1120 be, and it is hereby, granted and One To One Communications, Inc. of Mobile, Alabama 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.

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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 A. Unwille

Mark Sanders
Chairman

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

ATTEST:

John Burdette

Deputy Director