

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1124
XIEX Telecommunications, Inc. of)
Houston, Texas seeking a Certificate)
of Public Convenience and Necessity) GRANTED
to resell interLATA telecommunication)
services in Nebraska.) Entered: March 7, 1995

APPEARANCES:

For the Applicant

Kyle Pentecost
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For the Communications Department

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PRELIMINARY MATTERS

XIEX Telecommunications, Inc., (XIEX) of Houston, Texas filed an application with the Commission on November 7, 1994. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold interLATA long distance service. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, November 9, 1994. XIEX appeared before the Commission for a hearing, chaired by Commissioner Urwiller, February 13, 1995 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 Final Judgement (the "MFJ") issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co.,

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-1124

PAGE TWO

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.

Kyle Pentecost, Secretary of XIEX, testified. Mr. Pentecost has been with the company since its inception in 1992. Mr. Pentecost testified, and the pleadings reflect, that the applicant seeks only interLATA authority. The filed application does not seek authority to provide intraLATA service or 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

XIEX was incorporated in 1992 in Nevada. Its officers are Robert Livingston, President; Gary Pentecost, Executive Vice-President and Kyle Pentecost, Secretary.

XIEX 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 and debit cards to residences and businesses.

The applicant will market its product through telecommunication consulting firms. These firms contact consumers and recommend services that would fill their telecommunication needs. These people are independent operators and are paid on a commission basis.

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-1124

PAGE THREE

The company will compile and conduct its own billing. For questions regarding bills or for customer service, the company provides a toll-free 800 number for assistance.

The applicant is certified to conduct business in 17 states and has applications pending in 5 others. XIEX 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 is adequately financed. Guarantee statements have been provided by Taxis-Ohio Gas, Inc. for debts XIEX assumes with MCI, WilTel and Network Long Distance. Therefore, the company has strong financial support.

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. The company provides in its tariff that adjustments will not be made to a consumer's bill after one year. However Mr. Pentecost stated if a billing error is not detected until after one year, the company will make any necessary credits without argument.

In conclusion, Mr. Pentecost testified that XIEX 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-1124 be, and it is hereby, granted and XIEX Telecommunications, Inc., of Houston, Texas is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA 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

Application No. C-1124

PAGE FOUR

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 7th day of March, 1995.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Rod Johnson
//s//Frank E. Landis
//s//James F. Munnely
//s//Daniel G. Urwiller


Chairman

ATTEST:


Executive Director