

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. C-1145  
USA Paging, Inc. of Scottsbluff, )  
Nebraska seeking authority to operate )  
as a resale common carrier of tele- ) GRANTED  
communications services within the )  
a reseller of telecommunications )  
state of Nebraska. ) Entered: July 6, 1995

APPEARANCES:

For the Applicant

John Heil  
Baird, Holm, et.al  
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Omaha, Nebraska 668102

For the Communications Department

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300 The Atrium, 1200 N Street  
P.O. Box 94927  
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PRELIMINARY MATTERS

USA Paging, of Scottsbluff, Nebraska filed an application with the Commission on January 12, 1995. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service. The applicant's corporate office is located at 1722 First Avenue, Scottsbluff, Nebraska, 69363. Notice of the application appeared in the Omaha Daily Record, January 13, 1995. USA Paging appeared before the Commission for a hearing, chaired by Commissioner Urwiller, May 7, 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 rules<sup>1</sup>, the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

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<sup>1</sup> 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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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., 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.

Greg Babbitt, general manager of USA Paging, testified. He has been involved in the telecommunications industry for approximately twelve years. Mr. Babbitt stated, and the pleadings reflect, the applicant seeks interLATA and intraLATA authority. The filed application does not seek authority to provide AOS.

USA Paging currently operates a paging system between York and North Platte, Nebraska. The company also interconnects with the statewide paging network which includes Lincoln, Omaha and Scottsbluff. Cable USA is a sister company to USA Paging and offers cable service to various areas in Nebraska. The companies are co-located. Both companies are owned by Russell and Elizabeth Hilliard.

The applicant is not certified to provide telecommunication services in any other state, nor does it intend to become certified outside Nebraska. USA Paging will offer intrastate services to residential and business subscribers. Initially, customers will be targeted in the Grand Island, Kearney and Hastings, Nebraska areas. The applicant proposes to provide 1+ and 800 services using facilities leased from Sprint.

The applicant will market its services through its USA Paging staff using door-to-door contacts. Advertising will also be conducted through print media and television. Proper documentation will be required before USA Paging will transfer a customer's long distance service.

For questions regarding customer service, the company will provide a toll-free, 800 number. USA Paging provides customer

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service during normal business hours. Billing will be done by a third party billing company.

Mr Craig Auer, chief financial officer of USA Paging, testified regarding the company's financial statements. The financial information provided to the Commission covered years ending 1994, 1993 and 1992. The statements reflect the company has continually incurred net losses.

The Commission has granted resale applications in the past that have shown net losses, as it is the opinion of the Commission that start-up companies need time to begin its operations and to acquire a customer base. In this application, USA Paging has been in operation for several years, yet the company has not demonstrated signs of improvement towards profitability. Therefore, the Commission will closely monitor the financial status of USA Paging for the upcoming year. USA Paging is hereby requested to remit financial statements to the Commission on a quarterly basis until December 31, 1996.

Pursuant to its tariff, USA Paging reserves the right to request deposits or advance payments. It is the Commission's concern that due to the continual losses of the applicant, subscribers might not be able to recoup money advanced to the applicant. Therefore, the Commission is of the opinion that USA Paging shall not request deposits or advance payments from subscribers. If USA Paging believes deposits or advance payments are necessary, a request for a change in authority must be made to the Commission. The Commission will review the financial condition of the company and may require the posting of a bond before approving such request.

The proposed tariff, which was submitted as a late-filed exhibit, is not in accordance with the Commission's Rules and Regulations. The company's policy pertaining to deposits does not comply with Commission Rule 002.19. By Commission Rule, the amount of deposit may not exceed the estimated charges for two (2) month's service plus toll charges for two (2) months. The tariff submitted by USA Paging incorrectly states twelve (12) months of estimated charges may be requested for a deposit. Further, by Commission Rule, all deposits shall bear simple interest at the minimum rate of seven percent (7%) per annum. The applicant's tariff is incorrect, as it refuses to pay interest on deposits.

To correct these errors, the tariff must be revised. Further, it is the Commission's opinion that no deposits or advance payments may be requested at this time. This mandate should accordingly be reflected throughout a corrected tariff submitted to Commission within thirty (30) days from the date of the Order.

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In conclusion, Mr Babbitt testified that USA Paging would offer its customers a unique package of services. Further, he stated the applicant's rates would be very competitive.

Based on the testimony, the exhibits, and the proposed tariff, the applicant has provided the requisite information, and is technically competent to provide service. 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-1145 be, and it is hereby, granted and USA Paging, Inc. of Scottsbluff, Nebraska is hereby authorized to operate as a resale carrier of intrastate inter-exchange 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 until December 31, 1996, the applicant provide quarterly financial statements, including intrastate income statements, as well as combined income statements and balance sheets prepared in accordance with Generally Accepted Accounting Principles (G.A.A.P.).

IT IS FURTHER ORDERED that applicant file an updated and corrected tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FURTHER ORDERED that applicant shall not request deposits or advance payments from subscribers until granted permission from the Commission.

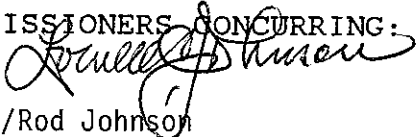
IT IS FINALLY ORDERED that this order be, and it is hereby made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

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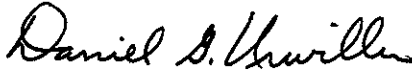
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MADE AND ENTERED at Lincoln, Nebraska this 6th day of July, 1995.


COMMISSIONERS CONCURRING:

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

NEBRASKA PUBLIC SERVICE COMMISSION

  
Chairman

ATTEST:

  
Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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