

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) Application No. C-1151  
PowerNet Communications, Inc. of )  
Tulsa, Oklahoma seeking a Certificate )  
of Public Convenience and Necessity ) GRANTED  
to operate as a reseller of inter- )  
exchange telecommunications services )  
in Nebraska. ) Entered: June 13, 1995

APPEARANCES:

For the Applicant

Vernon Twyman, Jr.  
8118 East 63rd Street  
Tulsa, Oklahoma 74133

For the Communications Department

Deonne Niemack, Staff Counsel  
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(402) 471-3101

PRELIMINARY MATTERS

PowerNet Communications, Inc., (PowerNet) of Tulsa, Oklahoma filed an application with the Commission on January 30, 1995. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold interLATA and intraLATA long distance service. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, February 1, 1995. PowerNet appeared before the Commission for a video-conference hearing, chaired by Commissioner Landis, March 21, 1995 in the Commission Library, 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:

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.,

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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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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.

Vernon Twyman, Jr., president and chief executive officer of PowerNet, testified. Mr. Twyman has been with the company since 1991. Mr. Twyman testified, and the pleadings reflect, that the applicant seeks interLATA and intraLATA authority. The filed application does not seek authority to provide AOS.

PowerNet is a wholly-owned subsidiary of Benefund, a small, publicly held company. Benefund acquired PowerNet in 1991.

PowerNet intends to offer intrastate services throughout Nebraska over facilities leased from Sprint. Specifically, the applicant proposes to provide inbound and outbound 1+ services, 800 services and calling and debit cards to residences and businesses.

The applicant will market its product through direct sales. PowerNet will also target non-profit organizations to provide services to their constituents.

The company will use local exchange carriers for billing residential customers. Some larger customers will be billed directly by PowerNet. For questions regarding bills or for customer service, the company provides a toll-free 800 number for assistance 24 hours a day, 7 days a week.

The applicant is certified to conduct business in 25 states and has applications pending in others. PowerNet 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 sustained losses in FY 1993-94.

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However, the interim statements for FY 1994-95 indicate that PowerNet has begun to show a profit.

The financial status of the parent company, Benefund, was also reviewed. Benefund submitted its last three reports filed with the SEC to the Commission. These reports reveal Benefund has sustained continual losses since its inception. Therefore, the financial status of the parent does not strengthen the application.

This 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, PowerNet, as well as Benefund, have been in operation for several years, yet the companies have not shown a profit. Therefore, the Commission will closely monitor the financial status of PowerNet for the upcoming year to determine whether the company has achieved profitability as reflected in its latest financial statement. PowerNet is hereby requested to remit financial statements to the Commission on a quarterly basis until December 31, 1996.

Pursuant to its tariff, PowerNet reserves the right to request deposits or advance payments. It is the Commission's concern that due to the uncertain financial status of PowerNet and its parent, subscribers might not be able to recoup money advanced to the applicant. Therefore, the Commission is of the opinion that PowerNet shall not request deposits or advance payments from subscribers. If PowerNet 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 company's financial condition and may require the posting of a bond before approving such request.

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. However, changes must be made in Section 2.7, regarding the company's policy on obtaining credit to reflect this mandate set forth in this Order.

In conclusion, Mr. Twyman testified that PowerNet will provide customers with significant savings. Furthermore, some customers will now have the opportunity to offer contributions to non-profit organizations of their choice. Lastly, Mr. Twyman stated 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, and

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is technically competent to provide services. The Commission will review quarterly filed financial statements to monitor the financial fitness of the applicant. 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-1151 be, and it is hereby, granted and PowerNet Communications, Inc., of Tulsa, Oklahoma is hereby authorized to operate as a **resale carrier of intrastate 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 and corrected tariff prior to offering service pursuant to the certificate granted in this order.

IT IS FURTHER ORDERED that until December 31, 1996, the applicant provide quarterly financial statements including (a) 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 shall not request deposits or advance payments from Nebraska 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.

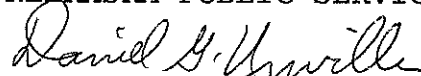
MADE AND ENTERED at Lincoln, Nebraska this 13th day of June, 1995.

COMMISSIONERS CONCURRING:



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

NEBRASKA PUBLIC SERVICE COMMISSION

  
Chairman

ATTEST:

  
Executive Director