

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1158
Clear Choice Communications, Inc. of)
Oklahoma City, Oklahoma seeking to)
obtain a certificate of public con-) GRANTED
venience and necessity to operate as)
a reseller of telecommunications)
within Nebraska.) Entered: June 20, 1995

APPEARANCES:

For the Applicant

Mark Costello
President
3233 N.W. 63rd Street
Oklahoma City, Oklahoma 73116

For the Communications Department

Deonne Niemack, Staff Counsel
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, Nebraska 68509

PRELIMINARY MATTERS

Clear Choice Communications, Inc. (Clear Choice) of Oklahoma City, Oklahoma filed an application with the Commission on February 17, 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 business office is noted above. Notice of the application appeared in the Omaha Daily Record, February 22, 1995. Clear Choice appeared before the Commission for a video-conference hearing, chaired by Commissioner Urwiller, May 23, 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, the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

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.

Application No. C-1158

PAGE TWO

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.

Mr. Mark Costello, President of Clear Choice, testified. He has been with the company since its inception in June, 1994. Mr. Costello stated, and the pleadings reflect, the applicant seeks interLATA and intraLATA authority. The filed application does not seek authority to provide AOS.

Clear Choice is privately owned, with Mr. Costello being the sole stockholder. Clear Choice has been granted authority to operate in nine states and other applications are pending. The company intends to become certified nationwide. At this time, the applicant has approximately 6,000 customers.

The applicant proposes to offer 1+ service, 800 service and calling cards. The underlying carrier will be WCT. The applicant will market its services statewide primarily to small businesses. Marketing will be conducted by the applicant's own sales agents. Solicitations will be made via telephone. A signed letter of agency is required before customers will be transferred to Clear Choice.

For questions regarding customer service, the company provides a toll-free, 800 number, 24 hours a day. At this time, billing will be done by Clear Choice and compiled by Myriad Systems of Oklahoma City. In the future, the applicant may use local exchange carrier billing in Nebraska.

Mr. J. Ernest Light, certified public accountant, testified regarding the company's financial fitness. Statements since the company's inception were provided to the Commission. The statements reflect the company has one note

Application No. C-1158

PAGE THREE

from a local bank, with the remainder of the financing coming from the owner, Mark Costello. Mr. Light stated he felt the company was financially stable at this time.

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 in order to acquire a customer base. In this application, Clear Choice has been incorporated for one year and the company is demonstrating signs of improvement. Therefore, the Commission approves this application; however the company's financial statements will be closely monitored for the upcoming years.

Pursuant to the tariff, Section II - 2.16, Clear Choice reserves the right to request deposits. It is the Commission's concern that due to the present financial condition of the applicant, subscribers might not be able to recoup money advanced to Clear Choice for deposit purposes. Therefore, the Commission is of the opinion that Clear Choice shall not request deposits or advance payments from subscribers. If Clear Choice believes deposits or advance payments are necessary, a request for such 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 appears to be in accordance with the Commission's Rules and Regulations, provided that the sections pertaining to advance payments and deposits is altered.

In conclusion, Mr. Costello testified that Clear Choice would offer small businesses a competitive price for telecommunications services and enhance long distance competition. Further, he stated the applicant's offers a simple product of high quality.

Based on the testimony, the exhibits, and the proposed tariff, the applicant has provided the requisite information, and is financially and 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-1158 be, and it is hereby, granted and Clear Choice Communications, Inc. of Oklahoma City, Oklahoma is hereby authorized to operate as a resale carrier

Application No. C-1158

PAGE FOUR

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 prior to April 30th of each year.

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.

MADE AND ENTERED at Lincoln, Nebraska this 20th day of June, 1995.

COMMISSIONERS CONCURRING:



//s//Rod Johnson


//s//James F. Munnelly

NEBRASKA PUBLIC SERVICE COMMISSION



Vice-Chairman

ATTEST:



Deputy Director