

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1173
of NeTel, Inc. of Fort Lauderdale,)
Florida seeking authority to oper-)
ate as a reseller of interexchange) GRANTED
telecommunications services within)
the state of Nebraska.) Entered: October 31, 1995

APPEARANCES:

For the Applicant

For the Communications Department

Scott Burns and
Ragrip Devres
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Fort Lauderdale, FL 33334

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P.O. Box 94927
Lincoln, Nebraska 68508

PRELIMINARY MATTERS

NeTel, Inc. of Fort Lauderdale, Florida filed an application with the Commission on April 13, 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 address is noted above. Notice of the application appeared in the Omaha Daily Record, April 18, 1995. NeTel appeared before the Commission for a video-conference hearing, chaired by Commissioner Urwiller, October 16, 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 rules¹, the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

¹Interexchange reseller application are governed by Neb. Rev. Stats. 75-604 and 86-805 (Cum. Supp. 1994 and 1994 Reissue, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

Application No. C-1173

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.

Scott Burns and Ragrip Devres testified for NeTel. Mr. Burns serves as a staff consultant for the company, while Mr. Devres is the company's Vice-President. Mr. Burns stated and the pleadings reflect, the applicant seeks both intraLATA and interLATA authority.

NeTel is a privately-owned company and was incorporated in Delaware in November, 1994. The applicant has received authority to operate in roughly thirty-two states and intends on becoming certified nationwide. No state has denied NeTel a certificate of authority and no formal complaints have been filed against the company.

The company offers 1+, 800 service, travel cards and intends to offer debit cards in the future. Services will be available for both business and residential subscribers. Billing for residential services will be provided by the local exchange carriers, while commercial subscribers will be billed directly by NeTel.

The underlying carrier for the services will primarily be LDDS or WilTel. The company provides a toll-free 800 number for customer service, twenty-four hours a day, seven days a week.

Telemarketing, as well as independent sales agents, will be used to promote services. NeTel submitted advertising materials to the Commission. Upon reviewing the brochures, it appears NeTel offers cash bonuses and cash income for switching other subscribers to NeTel. An agent can receive 2% residual income from the people he or she switches to NeTel up to four

Application No. C-1173

PAGE THREE

(4) levels deep. This Commission has taken the position that it does not have jurisdiction to regulate promotional schemes and marketing materials. However, we caution the company to take strong measures to prevent unauthorized switching, also known as "slamming". With monetary incentives that the company offers for switching people, the chance of slamming increases significantly.

Financial information was provided to the Commission in the application. The statements cover the period from December, 1994 to October, 1995. The statements reflect the company is in the initial stage of beginning business and is incurring start-up costs. However, the most current income statement indicates the company the company generated a net profit for the period.

The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and Regulations. The tariff states that company will not collect advance payments or deposits.

Based on the testimony, the exhibits, and the proposed tariff, the applicant has provided the requisite information, has demonstrated its financial resources, and has proven to be 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-1173 be, and it is hereby, granted and NeTel, Inc. of Fort Lauderdale, Florida is hereby authorized to operate as a **resale carrier of intrastate interexchange intraLATA and interLATA telecommunications services within the state of Nebraska.**

IT IS FURTHER ORDERED that the applicant shall file, in accordance with the applicable statutes on or before April 30th of each year, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) a copy of any annual report to stockholders, (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission, (d) balance sheet and income statement for the previous year of operation and (e) 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.

Application No. C-1173


PAGE FOUR

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

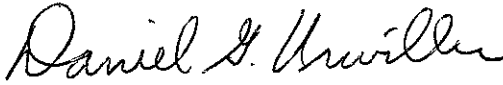
IT IS FINALLY ORDERED that this order be, and it is hereby made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 31st day of October, 1995.

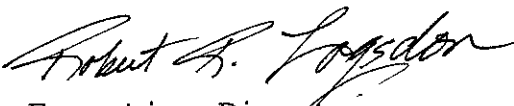
COMMISSIONERS CONCURRING:


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

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director