

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1197
Smartel Communications, Inc., of)
Boston, Massachusetts seeks authority) to obtain a Certificate of Public) GRANTED
Convenience and Necessity to operate)
as a resale carrier of intrastate)
telecommunications services within)
the state of Nebraska.) Entered: Sept. 12, 1995

APPEARANCES:

For the Applicant

Jonathan Slater
120 Boylston Street
Boston, Massachusetts 02116

For the Communications Department

Hal Hasselbalch, General Counsel
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, Nebraska 68508

PRELIMINARY MATTERS

Smartel Communications, Inc. (hereinafter referred to as Smartel) of Boston, Massachusetts filed an application with the Commission on June 5, 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, June 7, 1995. Smartel appeared before the Commission for a video-conference hearing, chaired by Commissioner R. Johnson, August 14, 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.

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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.

Jonathan Slater, President of Smartel, testified. Mr. Slater stated, and the pleadings reflect, the applicant seeks both intraLATA and interLATA authority. The filed application does not seek authority to provide AOS.

The applicant was formerly known as Z Access Communications; but, changed its name to Smartel for marketing purposes. Smartel is in the process of becoming certified nationwide and is currently certificated in approximately fifteen states. No state has denied Smartel a certificate and no formal complaints have been filed against the company.

Smartel intends to offer intrastate services throughout Nebraska. Specifically, the applicant proposes to provide 1+ services and calling cards to businesses. The underlying carrier will be MCI, Sprint or WilTel.

The company provides a toll-free 800 number for customer service during normal business hours and is backed up by an answering service that is able to access Smartel employees on an emergency basis. Smartel has its own billing software and sends invoices to its customers.

The requisite financial information was provided to the Commission in the application. The company generated less revenues in 1994 than 1993; however, Mr. Slater stated this was due to the loss of a major customer. He went on to say that Smartel intends to expand its customer base and to be less reliant on a small number of large users in the future. The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and Regulations.

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In conclusion, Mr. Slater testified that Smartel will offer customers a competitive rate and multiple services which will bring numerous benefits to business users.

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-1197 be, and it is hereby, granted and Smartel Communications, Inc. of Boston, Massachusetts, 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) the annual report to stockholders, (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission and (d) 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 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 12th day of September, 1995.

COMMISSIONERS CONCURRING:



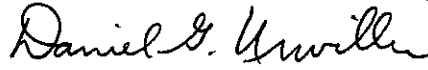
//s//Rod Johnson

//s//Frank E. Landis

//s//James F. Munnelly

//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director

