

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1232
of Smartalk Teleservices, Inc.)
of Beverly Hills, California)
seeking authority to operate as a) GRANTED
resale carrier of intrastate inter-)
LATA and intraLATA telecommunica-)
tions services within the state of)
Nebraska.) Entered: December 5, 1995

APPEARANCES:

For the Applicant

Robert Lorsch
9915 Santa Monica Blvd.
Beverly Hills, CA 90210

For the Communications Department

Deonne L. Bruning
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, Nebraska 68508

PRELIMINARY MATTERS

Smartalk Teleservices, Inc. (hereinafter referred to as Smartalk) of Beverly Hills, California filed an application with the Commission on September 7, 1995. The company seeks authority to obtain a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange telecommunications services within the State of Nebraska. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, September 8, 1995. Smartalk appeared before the Commission for a video-conference hearing, chaired by Commissioner Dan Urwiller, October 31, 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 October 31, 1995 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.

Robert Lorsch, President of Smartalk, testified. Mr. Lorsch stated, and the pleadings reflect, the applicant seeks both intraLATA and interLATA authority. The application does not seek authority to provide Alternate Operator Services (AOS).

Smartalk is a privately held company that incorporated October 28, 1994. Mr. Lorsch testified the corporation began shipping products around the middle of 1995 and that he expects the company will be profitable by January 1996.

The applicant has received authority to operate in excess of forty states and applications are pending nationwide. In addition, Smartalk expressed that it expects approval of those applications to come within the next several weeks. No state has denied Smartalk a certificate of authority and no formal complaints have been filed against the company.

Smartalk will use AT&T and MCI as underlying carriers for the services, with MCI being the predominate carrier. Smartalk retains the services of West Telemarketing and Pacific Telesis to provide live operator services. In addition, Smartalk employs two full time individuals that do nothing but handle customer complaints that cannot be handled initially by the live operators.

Smartalk will specifically market debit cards. Mr. Lorsch indicated that 99% of Smartalk's business at this particular time is prepaid calling cards, with no plans to offer anything other than debit card services.

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Smartalk will target the medium income family that would have children at college and those that spend time in the mobile life style with the secondary market clearly being the business traveler. Mr. Borsch stated that Smartalk will also offer a corporate program designed to accommodate companies which choose to provide calling cards for their employees use on the road.

Smartalk markets its products through retail outlets, such as convenience, drug and grocery stores. In addition, the debit cards are also being offered directly to corporate accounts.

Financial information was provided to the Commission in the application. The statements reflect the company is adequately financed and is capable of offering service within the state.

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-1232 be, and it is hereby, granted and Smartalk Teleservices, Inc., of Beverly Hills, California 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.

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

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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 5th day of December, 1995.

COMMISSIONERS CONCURRING:

//s//Lowell Johnson

//s//Rod Johnson

//s//Frank E. Landis

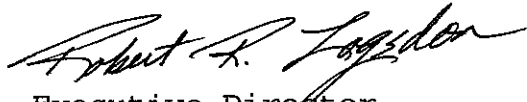
//s//James F. Munnelly

NEBRASKA PUBLIC SERVICE COMMISSION



Vice Chairman

ATTEST:



Executive Director