

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1245
Business Telecom, of Raleigh, North)
Carolina seeking authority to)
operate as a resale common carrier) GRANTED
of telecommunications within the)
State of Nebraska.) Entered: April 23, 1996

APPEARANCES:

For the Applicant:

Barbara Greene
4300 Six Forks Road, Suite 500
Raleigh, North Carolina 27609

For the Communications Department:

R. Andrew Massey
300 The Atrium, 1200 N St.
P.O. Box 94927
Lincoln, Nebraska 68508

PRELIMINARY MATTERS

Business Telecom, Inc., (hereinafter referred to as BTI) of Raleigh, North Carolina filed an application with the Commission on October 11, 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, on October 12, 1995. BTI appeared before the Commission for a video-conference hearing, chaired by Commissioner Johnson, April 1, 1996 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 April 1, 1996 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

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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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.

BTI is a privately held company which was incorporated in 1983 in North Carolina under the name Telefax. In 1984, Telefax's name was changed to Business Telecom. Peter Loftin is the sole shareholder of BTI. BTI seeks both intraLATA and interLATA authority.

Barbara Greene testified for BTI. Ms. Greene is the Regulatory Administrator and has been with BTI since 1994. Ms. Greene stated the applicant has received authority to operate in approximately forty-five (45) states and plans to eventually be certified in all fifty (50) states. No state has denied BTI a certificate of authority and no formal complaints have been filed against the company.

The underlying carrier for the services will be Allnet. BTI uses its own system and local exchange carriers for billing. BTI's name and customer service information is located on all its bills. In addition, BTI has a toll-free 800 number for customer service, which operates twenty-four (24) hours a day.

At this time, BTI markets 1+, 800 services, travel cards, and alternate operator services. BTI targets both residential and small to medium sized businesses. Some of the marketing techniques that will be used in Nebraska are direct mailing, telemarketing and sales agents. BTI has incorporated a screening process to ensure that all of its sales agents operate in good faith. In addition, BTI has a policy that prohibits slamming and it follows the FCC's guidelines for protecting consumers. BTI does not require an advance deposit to obtain its services.

Financial information was provided to the Commission in the application. The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and

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Regulations.

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-1245 be, and it is hereby, granted and Business Telecom, Inc., of Raleigh, North Carolina is hereby authorized to operate as a resale carrier of intrastate interexchange intraLATA and interLATA telecommunications services within the state of Nebraska.

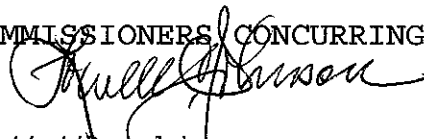
IT IS FURTHER ORDERED that the applicant shall file, in accordance with the applicable statutes on or before April 30th of each year, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) a copy of any annual report to stockholders, (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.


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 23rd day of April, 1996.

COMMISSIONERS CONCURRING:


//s//Rod Johnson
//s//James F. Munnelly
//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Deputy Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
