

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1331
of Optex, Inc. of Dublin, Ohio,)
seeking authority to operate as a)
resale common carrier of telecommu-) GRANTED
nications services within the state)
of Nebraska.) Entered: August 27, 1996

APPEARANCES:

For the Applicant

Michael A. Guider
4880 Blazer Parkway
Dublin, Ohio 43017

For the Communications Department

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

PRELIMINARY MATTERS

Optex, Inc. of Dublin, Ohio filed an application with the Commission on May 3, 1996. The company seeks authority to operate as a resale carrier of intrastate interLATA and intraLATA 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, May 7, 1996. Optex, Inc. appeared before the Commission for a video-conference hearing, chaired by Commissioner Rod Johnson, August 6, 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 rules (1), the evidence adduced at the August 6, 1996 hearing, and being fully informed, the Commission is of the opinion and finds:

(1) Interexchange reseller applications 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.

Michael Guider of Optex, Inc., testified. Mr. Guider 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). No advance deposits are required by the applicant.

Optex, Inc. is a privately-held corporation which was incorporated in the state of Ohio in 1992. The applicant is in the process of obtaining required authorizations to provide telecommunications services in all fifty states. In no instance has an Application been denied or rejected.

No officer, director or shareholder having 5% or more of Optex, Inc.'s voting securities nor any of Optex, Inc.'s business operations has been involved in a formal complaint or other investigative or enforcement proceeding.

Optex, Inc. proposes to provide switched and dedicated access "1+" long distance telecommunications services suitable for voice and limited data applications in the State of Nebraska. The applicant's underlying carriers will be LCI and Wiltel.

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

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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-1331 be, and it is hereby, granted and Optex, Inc., of Dublin, Ohio is hereby authorized to operate as a resale carrier of intrastate interexchange intraLATA and interLATA telecommunications services within the state of Nebraska, including alternate operator services.

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 statements 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 27th day of August, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

[Signature]
 //s//Rod Johnson
 //s//Frank E. Landis
 //s//James F. Munnelly
 //s//Daniel G. Urwiller

Chairman

ATTEST:

[Signature]
 Robert B. Logsdon
 Executive Director

