

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1635
of F & S Fiber Systems, L.L.C.)
seeking authority to provide in-) GRANTED AS MODIFIED
state interexchange telecommunica-)
tions services in the state of)
Nebraska.) Entered: March 16, 1998

APPEARANCES

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BY THE COMMISSION:

An application was filed by F & S Fiber Systems, L.L.C. (F&S) on September 19, 1997, seeking a Certificate of Public Convenience and Necessity to provide intrastate interexchange telecommunications services in its requested service territory in the State of Nebraska.

On October 15, 1997, F&S filed an Amended Application and Request for Authority (the Amendment) to authorize F&S to provide intrastate intraexchange and interexchange telecommunications services in the State of Nebraska, pursuant to Neb. Rev. Stat. § 86-805 and Title 291, Article 5, § 003.12A of the Commission's Rules. The Amendment was withdrawn January 30, 1998.

Petitions of Formal Intervention were timely filed by Aliant Communications Co. (Aliant), GTE Midwest (GTE), Nebraska Telephone Association (NTA), Nebraska Independent Telephone Association (NITA), Glenwood Telephone Membership Corporation, Benkelman Telephone Co., Cozad Telephone Co., Diller Telephone Co., Hemingford Cooperative Telephone Co., Henderson Cooperative Telephone Co., and Wauneta Telephone Co. Notice of this docket was published in *The Daily Record*, Omaha, Nebraska, on September 24, 1997, and October 21, 1997, pursuant to the Rules and Regulations of the Commission.

A public hearing was held on February 2, 1998, in the Commission Hearing Room with appearances as shown.

EVIDENCE

In support of the application, F&S presented testimony of the following witnesses at the hearing on February 2, 1998:

Mr. Thomas Donahue, Vice President, Sales & Systems Integration, and previously Vice President of Engineering, for Broadband Networks, Inc. (BNI), offered testimony to describe the technical design provided by BNI for F&S's proposed system, to address technical questions, and to demonstrate that F&S has the technical expertise to provide the services sought to be offered by F&S in its Application for Authority. Mr. Donahue stated that F&S's proposed system was neither technically nor functionally similar to

a typical telephone system. F&S's proposed system uses cable television, cable modem and high-speed campus networking technology to provide a higher grade of video and high-speed data-dominated performance. F&S's proposed system architecture does not utilize telephone switches or switch architecture and does not use the DS-3 based design used by LECs to deliver their own equivalent video conferencing services. Rather, the proposed F&S system uses signal processing to reproduce the tuning effect of a television remote control. This signal processing most clearly resembles the operation of a VCR which places all signal contact into Channel 2 or 3 to connect to a television.

Mr. Donahue also stated that F&S's system will not provide a "dial tone" as used in accessing the public telephone network and that F&S will not connect to, or integrate with, the public telephone system. Any connection to a public telephone system would be only to gateways serving other private, dedicated distance learning or interactive session locations. F&S's system is not intended to be used by typical residential customers, but rather by users of high-end interactive technology, such as educational institutions and business locations. Mr. Donahue presented testimony and exhibits describing the network functions and the equipment to be used.

Mr. Donahue stated that F&S possesses the technical and engineering talent and knowledge to provide the proposed services in Nebraska and that the technology utilized in the proposed F&S system is completely consistent with the technology and system design techniques commonly used in cable television systems. In addition, BNI will be providing technical support and ongoing service to F&S for the installation of the initial sites in Nebraska, in conjunction with the F&S staff. Mr. Donahue concluded by stating that, in his opinion, the proposed services did not constitute "plain old telephone" service, as that term is commonly used in the industry.

Mr. Christian M. Hilliard, Chief Executive Officer of F&S, described the general business operations and structure of F&S, F&S's financial qualifications to provide the proposed services in the State of Nebraska, and provided testimony to demonstrate that F&S's application will be in the public interest. Mr. Hilliard testified that F&S will comply with all state and federal laws and

Commission regulations and orders. F&S is seeking intrastate interexchange authority to enable it to provide interactive video conferencing services to schools and other customers in Nebraska. F&S's proposed interactive video conferencing system will allow users to receive and terminate multiple full-motion video conferences at any user location. The proposed system has the capability to support other features, such as wide-area connection to local area networks, high-speed Internet access and distribution of multimedia library services from one site to the entire network. The two-way video and audio component of F&S's proposed services is the subject of F&S's request for interexchange authority from the Commission.

Mr. Hilliard testified that F&S is a Nebraska limited liability company with its principal office in Kearney, Nebraska. F&S owns and operates a comprehensive fiber optic network system which connects cable systems owned by its affiliate, Cable USA, Inc. (Cable USA). The system is designed to provide certain telecommunications and information services to educational institutions and other customers in Nebraska. F&S currently owns approximately 100 miles of fiber and is planning to increase its fiber optic network to 450 miles to provide its proposed services in its requested service territory.

Mr. Hilliard testified that F&S will be providing its services largely over its own fiber optic network to schools, hospitals, governmental entities and other businesses requiring video conferencing, high-speed data networking or Internet services. Due to the cost of the proposed services and the networking capacity necessary to utilize the system, F&S does not view its proposed services as desirable for individual residential users. Mr. Hilliard stated that F&S has no business plan to provide local exchange services in Nebraska and that its proposed interactive video conferencing services do not constitute basic local exchange service under Nebraska law.

Mr. Hilliard testified that F&S has ample financial resources to provide the proposed services in Nebraska. F&S's expected cash flow, its access to a substantial line of credit, and its access to sufficient sources of equity and debt capital give it the financial resources necessary to provide its proposed services in Nebraska.

In addition, F&S will be able to access the financial resources of its affiliated entities, including Cable USA.

Mr. Hilliard also testified that the public interest would be served by granting F&S's Request for Authority because F&S's proposed interactive video conferencing system will enhance the ability of Nebraska's educational institutions to meet the needs of their students and permit businesses and governmental entities to obtain lower cost and higher quality services.

Mr. Stuart Gilbertson, Chief of Operations and General Manager of F&S, testified that F&S possesses the managerial competency to provide the proposed interexchange services in its service territory. Mr. Hilliard has been involved for approximately 10 years with affiliates of Cable USA in the cable television business and became co-founder and principal member of F&S in 1997. Mr. Gilbertson has more than 11 years of experience in the communications industry, including responsibility for system-wide operations of Cable USA, USA Paging and other associated entities; franchise renewals with various municipalities; Federal Communications Commission compliance matters; design and implementation of fiber optic networks; telecommunication system design; and capital budgeting and planning. Mr. Brian Olin, F&S's Construction Coordinator and Technical Supervisor, is trained in digital networks, basic telephony, digital transmission, multiplexing methods, SONET structures and functions, fiber optic principles and applications in CATV, construction techniques, splicing methods, path testing and fiber optic testing. Mr. Olin previously owned and operated a cable television system in Arnold, Nebraska, and has been Cable USA's Technical Supervisor and Construction Coordinator since 1990. Mr. Jim Crosland, Marketing Director of F&S, holds a Bachelor of Arts in Education, served 24 years as Executive Director of Central Nebraska Community Services in Loup City, Nebraska, and is now responsible for F&S's marketing and marketing research. F&S will utilize the expertise of BNI for installation, maintenance, support and employee training.

Mr. Gilbertson testified that F&S has the technical expertise and resources to provide the proposed interexchange services in Nebraska. Burial of fiber optic cable is contracted with K-D Cable, Inc. of Grand Island, a firm with more than 15 years of experience in cable deployment. Splicing, termination and inter-

connection are performed by F&S technical staff, with assistance as needed from Cable USA's technical staff. Service support and maintenance of the proposed network will also be handled by F&S's staff, with assistance by Cable USA technicians. F&S intends to hire additional technical employees with expertise in maintaining video and data networks; and finally, BNI will provide ongoing support and maintenance services as necessary.

Don Vanderheiden, a distance learning consultant testified in favor of the F&S application. Mr. Vanderheiden believes the entry of another competitor in the market will lower prices and make video conferencing services affordable to schools. The Galaxy system is working very well and has brought cost savings. Mr. Vanderheiden testified he also believes F&S has the capability to provide the requested services to schools.

Al Schneider, ESU Administrator at Beatrice and member of the Southeast Nebraska Distance Learning Advisory Committee, testified in support of the application.

Mr. Schneider stated the services being provided by Galaxy, with assistance from BNI, have been satisfactory. Mr. Schneider testified they are very pleased with the service and also with the cost that is assessed. He encouraged approval of the F&S application.

Cross-examination of F&S's witnesses by the formal intervenors focused on F&S's financial condition, overlap of service areas, the possibility of interconnection with certificated telephone companies, the possibility of offering other telecommunication services and the clarity of F&S's tariff regarding third-party users.

O P I N I O N A N D F I N D I N G S

As stated in the F&S Application, the services for which it is seeking certification contain fully-interactive capabilities. F&S's fiber optic cable will transmit one-way and two-way video and audio. Such services were found to be subject to regulation pursuant to Application C-1485 submitted by Galaxy Telecom, L.P. (Galaxy). Therein, the Commission concluded that "Galaxy's proposed 'interactive' two-way video conferencing services, both the video and audio components, constitute telecommunications services

under Nebraska law and, therefore, are properly the subject of regulation by the Commission." The Commission then proceeded to classify Galaxy's proposed interactive services as interexchange services and found that Galaxy possessed adequate financial, managerial and technical resources and that provision of its services would be in the public interest. F&S seeks to provide services nearly identical to those provided by Galaxy and, therefore, requests that similar authority be granted to F&S.

We do not find, however, that at this time that F&S has demonstrated a need or sufficient desire to serve the business community. Testimony focused on the educational benefits that will be realized if this application is granted. While we agree that schools, libraries and health care providers will certainly benefit from this new innovative system, we do not believe F&S has proven a public interest in the provision of this service to third-party users. Testimony indicated no such use was being marketed or encouraged. If in the future, F&S desires to serve businesses with this technology, it may refile an application with the Commission requesting its authority be amended.

Upon consideration of the application, the governing statutes and rules, the evidence provided at the public hearing, and giving due consideration to the evidence and being fully informed, the Commission is of the opinion and finds as follows:

1. The interactive two-way video and audio services to be offered by F&S constitute "telecommunications services" under the Telecommunications Act of 1996 and applicable Nebraska law.
2. The telecommunications services to be offered by F&S are not basic local exchange services as defined under Neb. Rev. Stat. § 86-802(2) and are, rather, interexchange services subject to regulation under Neb. Rev. Stat. Section 86-805 and Title 291, Neb. Admin. Regs. Chapter 5, § 003.12A.
3. F&S possesses adequate financial resources to provide the proposed services.
4. F&S possesses adequate managerial and technical competency to provide the proposed services.

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5. The provision of F&S's proposed services to educational service units, schools, libraries and health care providers will promote the public policy goals of the State of Nebraska set forth in Neb. Rev. Stat. Section 86-801 and will promote the interests of the public requesting such services from F&S.

We find the application should be granted and F&S should be allowed to provide the requested services to schools, libraries and health care providers.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that pursuant to Neb. Rev. Stat. Section 86-805 and Title 291, Neb. Admin. Regs. Chapter 5, § 003.12A, Application No. C-1635 be, and it is hereby, granted as modified.

IT IS FURTHER ORDERED that F&S file a 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 Public Convenience and Necessity to furnish the service as authorized herein.

Made and entered at Lincoln, Nebraska, this 16th day of March, 1998.

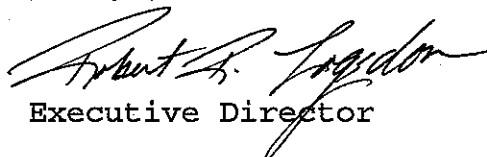
COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director