

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the application) Application No. C-1920
of Parcel Consultants, Inc. dba)
Minimum Rate Pricing of Cedar Grove,)
New Jersey, seeking authority to) APPLICATION GRANTED
operate as a resale common carrier)
of telecommunications services)
within the state of Nebraska.) Entered: February 9, 1999

APPEARANCES:

For the Applicant:
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Attorney at Law
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LaVista, NE 68128

For the Commission:
Chris A. Post
300 The Atrium
1200 "N" Street
Lincoln, NE 68508

BY THE COMMISSION:

By application filed October 13, 1998, Parcel Consultants, Inc. dba Minimum Rate Pricing (Applicant), Cedar Grove, New Jersey, seeks authority to operate as a resale carrier of interexchange telecommunications services within the state of Nebraska. Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 14, 1998, pursuant to the rules of the Commission. A hearing was held on December 22, 1998, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

In support of its application, Applicant produced one witness, Mr. Drew Keena, company vice-president, who testified as follows:

Parcel Consultants, Inc. dba Minimum Rate Pricing is a privately-held corporation, organized under the laws of New Jersey. The applicant is a switchless, non facilities-based interexchange resale carrier providing switched and dedicated interexchange telecommunications services to businesses and residences.

Mr. Keena indicated that the applicant had grown faster than expected and as a result the growth was not properly maintained. This resulted in customers being slammed as orders were processed when they should not have been, as well as numerous billing related problems. To resolve these problems, the applicant made a unilateral decision in July 1998 to cease all marketing nationwide.

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The applicant acknowledged and took responsibility for the company's numerous problems in the state of Nebraska. First of all, the original application for authority in the state of Nebraska was dismissed because of failure to comply with repeated Commission requests for information. Secondly, a Show Cause Order was entered against the applicant in April of 1998 because of numerous slamming complaints. Finally, the applicant's Certificate of Authority was revoked and the company was ordered to cease and desist operations in Nebraska as of August 1998 for violations of Commission Rules and Regulations.

At the time of hearing, the applicant had certificates of authority in 42 states. Their operating authority has been revoked in Georgia, Wisconsin and Nebraska. Formal proceedings have been initiated against the applicant in a number of states including South Carolina, Tennessee, Florida and Alabama. Furthermore, the FCC and 20 state attorney generals had initiated proceedings against the applicant which were eventually resolved through settlement agreements whereby the applicant agreed to pay large monetary settlements.

Mr. Keena testified that while their original certificate in Nebraska had been revoked, the applicant still provides service to approximately 4,000 customers in the state.

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

The Commission believes that while it is clear from the testimony that the applicant has conducted itself improperly in the past, the applicant has paid all fines and taken all corrective actions as required by this Commission and the Nebraska Attorneys General's Office. Therefore, this Commission grants the applicant authority to provide resold telecommunications services within the state of Nebraska, subject to the applicant following all voluntary agreements made with this Commission.

The applicant, upon recognition that their Certificate had been revoked, complied with Commission Rules and Regulations and filed the present application seeking that their Certificate be reinstated or in the alternative a new certificate be granted.

The applicant voluntarily ceased marketing in the state of Nebraska in July 1998. The applicant has taken additional steps to demonstrate to this Commission that the company intends to comply with all Commission Rules and Regulations.

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Interexchange reseller applications are subject to Commission jurisdiction under Neb. Rev. Stat. Sections 75-604 and 86-805 and Title 291 of the Commission's Rules and Regulations, Chapter 5, Rule 003.12. From examination of the application filed herein, the Commission finds that the applicant possesses the adequate technical and managerial competency to provide the proposed service. Therefore, the application should be granted, subject to all voluntary limitations and conditions set forth below.

1. Parcel Consultants, Inc. dba Minimum Rate Pricing shall not do any marketing in the state of Nebraska until August 1, 1999.

2. Parcel Consultants, Inc. dba Minimum Rate Pricing shall deliver to the Commission, prior to conducting business under this Certificate, a performance bond in the amount of One Hundred Thousand Dollars to ensure that no Nebraskan is transferred to the Minimum Rate Pricing against their will, or "slammed".

3. Minimum Rate Pricing will forfeit said bond, after hearing, upon verification by the Commission of five complaints from customers who have been slammed by Minimum Rate Pricing after August 1, 1998.

4. The performance bond will remain in effect until August 1, 2000, or one year from the date Minimum Rate Pricing is allowed to resume outbound telemarketing, whichever is later.

5. During the period of August 1, 1999, through August 1, 2000, Minimum Rate Pricing agrees to provide this Commission with each and every telemarketing script and direct mail marketing piece it will use in Nebraska in advance of its use in the state of Nebraska.

If the applicant complies with all of the above required actions and voluntarily agreed to conditions, the Commission believes that a Certificate of Convenience and Necessity should be granted subject to said requirements and conditions.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1920 be, and it is hereby, granted and Parcel Consultants, Inc. dba Minimum Rate Pricing is hereby, authorized to operate as a resale carrier of intrastate interexchange intraLATA and interLATA telecommunications services within the state of Nebraska.

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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, and (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission. If applicant is unable to file items (a), (b) and (c), it shall submit a copy of its balance sheet and income statement for the previous year of operation and schedules showing telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses and taxes applicable to Nebraska operations or a statement that no operations were conducted.

IT IS FURTHER ORDERED that the applicant strictly comply with all voluntary conditions and requirements as set forth above.

IT IS FURTHER ORDERED that the applicant file its current 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 9th day of February, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Lowell C. Johnson

//s//Frank E. Landis

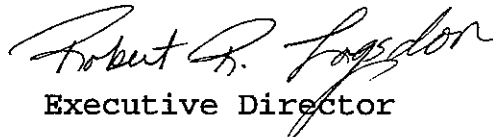
COMMISSIONERS DISSENTING:

//s//Anne C. Boyle

//s//Daniel G. Urwiller


Chairman

ATTEST:


Executive Director

DISSENT OF COMMISSIONERS ANNE C. BOYLE AND DANIEL G. URWILLER:

We disagree with the Opinions and Findings expressed by the majority of the Commission in this matter and the order approved by a three to two vote on February 9, 1999.

A review of the record for this reapplication finds that Parcel Consultants, Inc., dba Minimum Rate Pricing (MRP) has been granted numerous opportunities to demonstrate to this Commission that it is a reputable company capable of providing the telecommunications services proposed in its current application. However, it has repeatedly failed to do so.

MRP's original application for authority in the state of Nebraska was dismissed for failure to comply with repeated Commission requests for information. After authority was ultimately granted, a Show Cause Order was entered against the applicant in April of 1998 because of numerous slamming and billing complaints. In fact, MRP, with only about 4,500 customers in Nebraska, had more complaints than any other reseller in the state. Its business practices were so questionable that the Federal Communications Commission (FCC) and 20 state attorney generals, including Nebraska Attorney General Don Stenberg, initiated a nation-wide investigation. MRP paid a \$1.2 million settlement in lieu of any admission of guilt. Fifty-two thousand dollars of this settlement was paid to Nebraska.

The applicant's Certificate of Authority was revoked and the company was ordered to cease and desist operations in Nebraska as of August 1998 for violations of Commission Rules and Regulations. It must be noted that MRP again ignored requests from this Commission to file its annual report even while the nation-wide investigation was pending. The report was eventually filed with payment of a \$7,500 fine. MRP reapplied for authority in Nebraska and has continued to provide service until the outcome of this proceeding.

At the time of hearing, the applicant still had certificates of authority in 42 states. However, formal proceedings have been initiated in a number of states including South Carolina, Tennessee, Florida and Alabama. In addition to Nebraska, Georgia and Wisconsin have revoked MRP's operating authority.

During this proceeding, MRP offered a series of proposals including posting a \$100,000 dollar bond which would be forfeited if it is found guilty of slamming five times within one year after it begins marketing. MRP has stated it would not market in Nebraska until August of 2000. Never was its offer to be construed as a trade for authority. As a matter of fact, we would not be able to collect on the bond without hearings and tedious procedures absorbing more time and effort by this Commission and its staff.

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This Commission has given MRP every reasonable opportunity to serve customers in the State of Nebraska. During the public hearing on its reapplication, MRP's witness was asked why it ignored official requests to provide required documents to continue operations. He could not answer and did not provide any information regarding improved business practices. His only comment was a promise to "buckle down and do a better job going forward." An empty promise built on a foundation of slamming, investigations, heavy fines and turning its back on industry regulators is not enough to grant authority.

MRP offers no service that cannot be easily absorbed by many other reputable providers. In light of its history, it is not in the public's best interest to allow MRP to continue to prey on the consumers of Nebraska. Therefore, MRP's application should have been denied.


Commissioner Anne C. Boyle


Commissioner Daniel G. Urwiller