

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2141
of Econophone Services, Inc. of)
Paramus, New Jersey, seeking auth-)
ority to transfer control to)
Viatel, Inc. of New York, New) GRANTED IN PART
York, and request to change name)
on its certificate of authority)
to Destia Communications Services,)
Inc.) Entered: November 23, 1999

BY THE COMMISSION:

By application filed October 13, 1999, Econophone Services, Inc. (Econophone) of Paramus, New Jersey, seeks authority to transfer control to Viatel, Inc. (Viatel) of New York, New York, and requests to change the name on its certificate of authority to Destia Communications Services, Inc. Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 14, 1999. No protests were filed; therefore, this application is processed pursuant to the Commission's Rule of Modified Procedure.

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

1. Parties to the Application

Econophone, a Delaware corporation, is a wholly-owned subsidiary of Destia Communications, Inc. (Destia). Econophone was originally authorized by this Commission to resell intrastate interexchange services in Nebraska pursuant to Application No. C-1362, entered on October 8, 1996.

Destia is a publicly-held Delaware corporation that provides a variety of telecommunications services across North America and in some of the largest metropolitan areas of Europe. Destia does not possess a certificate of operating authority from this Commission.

Viatel is also a publicly-held Delaware corporation. Viatel provides telecommunications services across Europe, and is authorized to provide long distance telecommunications services in New York.

2. Transfer of Control of Econophone to Viatel

Under the terms of an Agreement and Plan of Merger executed by the parties, Econophone will become an indirect, wholly-owned subsidiary of Viatel. The transaction is structured as a merger of Viatel Acquisition, a wholly-owned subsidiary of Viatel created specifically for this transaction, with and into Destia. Following

the transaction, Destia will be the surviving entity, and Econophone will continue to be the direct and wholly-owned subsidiary of Destia.

In Docket No. C-1746/PI-19, the Commission examined the situations in which it has authority to approve, condition or deny mergers, acquisitions and other transfers of control. The Commission concluded that, based on the pertinent statutes, rules and regulations, the Commission's authority over transfers of control extends only to transactions involving certificated carriers in Nebraska.

The Commission's authority is further limited to transfers which directly affect the ownership or control of the certificated carrier. Transactions having only indirect affects on the securities of a certificated carrier, such as those involving entities at the holding company level or above, typically do not affect the actual ownership or control of the certificated entity and thus escape Commission jurisdiction.

In the present application, the transaction does not directly involve the securities of the certificated entity in Nebraska, Econophone. Econophone will continue to be directly and wholly-owned and controlled by its parent corporation, Destia. While the transaction may, in fact, touch the operations of Econophone through Viatel's control of Destia, the governing statutes and rules preclude us from exercising authority unless Econophone experiences a change in ownership or control *directly* as a result of the transfer of control. Because this condition is not satisfied, the Commission does not have the authority to express an opinion over the transaction.

3. Request for Name Change

Econophone further requests authority to change its corporate name in Nebraska to Destia Communications Services, Inc. The proposed name change will not affect the company's managerial, technical or financial abilities. Econophone has obtained authority from the Nebraska Secretary of State to use the name Destia Communications Services, Inc. The request should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Econophone Services, Inc. be, and they are hereby, authorized to change its corporate name in Nebraska to Destia Communications Services, Inc.

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IT IS FURTHER ORDERED that an updated tariff reflecting the change in name be filed with the Commission within thirty days from the date of this order.

MADE AND ENTERED at Lincoln, Nebraska, this day of 23rd day of November, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell C. Johnson

Frank E. Landis

//s//Lowell C. Johnson

//s//Frank E. Landis

//s//Daniel G. Urwiller

Robert R. Logsdon

Chairman

ATTEST:

Robert R. Logsdon

Executive Director

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