

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2175
of Xtracom, Inc. of Chicago,)
Illinois, to operate as a resale) ORDER OPENING DOCKET
carrier of intrastate interLATA) AND SETTING HEARING
and intraLATA telecommunications)
services within the state of)
Nebraska.) Entered: December 15, 1999

BY THE COMMISSION:

Xtracom, Inc. (hereinafter Xtracom or Applicant) of Chicago, Illinois filed an application with the Commission on March 22, 1996, for a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange telecommunications services within the state of Nebraska. After a video-conference hearing in May 1996, this Commission granted the application in an order entered in Application C-1310 on June 4, 1996. The applicant sent with that application a statement of assets, liabilities and equity income that this Commission found insufficient as a financial statement. This information was later supplemented by the applicant in order to comply with the Commission request.

The Commission notes that an annual statement is required of all certificated carriers in the state including the certificate holder's financial statements as part of its regulatory authority and pursuant to Neb. Rev. Stat. §86-807. In 1997, the Commission sent two notices to the applicant regarding the lawful requirement that an annual financial report was to be filed with the Commission before the required financial information was received.

The following year (1998), pursuant to a request made by the certificate holder, this Commission informed the certificate holder that it would not grant an exemption from the requirement to file an annual report in 1997. The Commission then received in early 1998 from the applicant a copy of a 1997 U.S. Income Tax Return. A letter dated April 6, 1998, and addressed to Steve Shyman, President of Xtracom noted that the copy of the income tax return did not satisfy the Commission's annual report filing requirements and included a letter of explanation detailing the minimum requirements set by the Commission for the annual filing.

In 1999, there occurred a similar series of events that led to a substantial fine being levied against the certificate holder and to the eventual revocation of authority. The Commission's annual report filing for 1998 was due April 30, 1999.

On March 10, 1999, Xtracom sent a letter to the Commission with a copy of the company's prior year tax return. On April 1, 1999, the Commission sent a letter to the applicant indicating that the information sent did not constitute a financial report as required by the Commission. It should be noted that this was not the first year that the applicant was informed that this information did not constitute the required information. On April 6,

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1999, the applicant sent a balance statement and an income statement. This, too, fails to comply with Commission requirements.

On May 25, 1999, the Commission opened Docket C-2051 and entered in the docket a petition to revoke operating authority and to cease and desist operations in Nebraska against all carriers who were not in compliance with the Commission's annual filing requirements. Xtracom, by virtue of failing to submit "the required proper and complete annual reports for 1998" was included as a defendant to the petition. Notice of the docket was published in The Daily Record, Omaha, Nebraska, on May 25, 1999.

On May 26, 1999, the Director of Communications for the Commission sent a letter by certified mail informing Xtracom of the delinquency and setting out the civil fines that were to accrue, the procedure to comply with the Commission's requirements, the timetable which the Commission would follow for possible revocation and the measures that could be taken by the applicant to prevent such revocation.

A hearing was held on August 3, 1999, on the petition for revocation and to cease and desist. The defendant failed to appear at that hearing. Accordingly, on August 10, 1999, this Commission entered an order revoking the authority of all named defendants, including Xtracom.

Commission records indicate that Steve Shyman, President of Xtracom, called the Commission on August 10, 1999, and inquired of a staff attorney what steps he needed to take to prevent revocation. The attorney told him that he would have to file a motion for reconsideration. The staff attorney further told Mr. Shyman the steps that would be required to file that motion. No motion was received by this office. On September 13, 1999, Mr. Shyman called and talked to another staff attorney and inquired as to the status of his certificate and was told that it had been revoked and that total administrative fines had accumulated to \$10,810.00. Mr. Shyman remarked words to the effect that he could not afford such a high fine and that it would not be worth it to pursue the certificate. He did agree to sign the standard stipulation and returned it via facsimile to the Commission on that date.

On or about December 6, 1999, Mr. Shyman sent a letter via facsimile to a staff attorney. That letter states in part,

"I have received a notice of revocation. I understand that I was late in filing my financial statements. I am aware that there is a large outstanding fine on the authority. I am asking commission (sic) to reconsider revocation and asking the commission to reduce or eliminate the fine."

Facsimile sent to the Commission by Steve Shyman.

After consultation with legal staff and the Director of Communications, this Commission has decided to treat this letter as an application for authority since the time frame for a motion for reconsideration to be considered has expired. In opening up this application, the Commission incorporates the following documents and information into this file:

1. The original application filed in C-1310, including all relevant documentation regarding incorporation, articles of incorporation, certificate of authority to transact business within the state as certified by the Nebraska Secretary of State and all other information regarding financial status and statements prior to January 1, 1998;
2. The letter sent via facsimile on or about December 6, 1999, to the Commission requesting a reconsideration of revocation and the request for reduction or elimination of accumulated fines; and,
3. All relevant documentation entered in Docket C-2051 regarding the applicant's prior revocation including all relevant notices, filings, petitions and orders.

In opening this application for authority, applicant is put on notice that the request for such authority will not be set for hearing until such time as the applicant has fully and completely complied with the requirements for the reporting of financial information in a format and form totally acceptable to the Commission.

The Commission will, at the time of the hearing for this application, undertake to review all conditions prerequisite for the acceptance of the application and will review the motion for reduction or elimination of accumulated fines accrued under Application C-1310. The Commission makes no finding regarding the accumulated fines under Application No. C-1310 at this time.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above application be opened and docketed under Application No. C-2175.

IT IS FURTHER ORDERED that a hearing be set on the application in this docket after, and only after, the Commission has received all necessary financial information that it requires to review this application in such form and format as may be directed by this Commission.

IT IS FURTHER ORDERED that if all requisite information including the financial information mandated as a condition of this application is not received by this Commission by the close of the business day of February 4, 2000, the Commission reserves the right to dismiss this application with or without prejudice.

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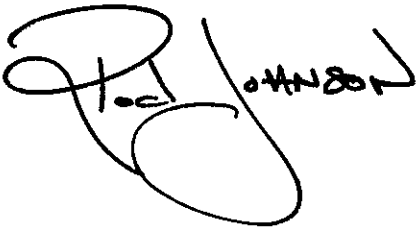
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IT IS FURTHER ORDERED that the order entered against the applicant on August 10, 1999, requiring Xtracom to cease and desist operations in the state of Nebraska remains in full force and effect.

MADE AND ENTERED in Lincoln, Nebraska, on this 15th day of December 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

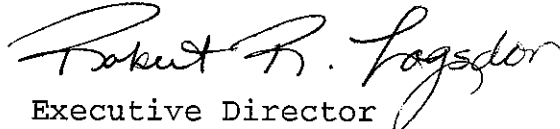
COMMISSIONERS CONCURRING:



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


Chairman

ATTEST:


Executive Director