

P-3003/NA-88-987REQUIRING FURTHER FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Barbara Beerhalter	Chair
Cynthia A. Kitlinski	Commissioner
Norma McKanna	Commissioner
Robert J. O'Keefe	Commissioner
Darrel L. Peterson	Commissioner

In the Matter of a Request by Telesphere Network, Inc. for a Certificate of Authority to Sell Long Distance Service and to Provide Alternative Operator Services

ISSUE DATE: April 11, 1989

DOCKET NO. P-3003/NA-88-987

ORDER REQUIRING FURTHER FILINGS

PROCEDURAL HISTORY

On December 22, 1988 Telesphere Network, Inc. (Telesphere or the Company) filed a request for a certificate of authority to provide long distance service and alternative operator services within the State of Minnesota. The Department of Public Service (the Department) examined the Company's filing and recommended granting authority to provide long distance service, subject to the elimination of geographical deaveraging from its rate structure. The Department also recommended granting interim authority to provide alternative operator services, pending completion of an ongoing generic investigation of such services, subject to certain conditions.

The Company subsequently agreed to comply with the Department's recommendations, and the Department recommended granting interim authority to provide alternative operator services.

The matter came before the Commission on April 4, 1989.

FINDINGS AND CONCLUSIONS

Authority to Provide Long Distance Service

The Commission agrees with the Department that the Company must eliminate geographical deaveraging from its rate structure, or show good cause for such deaveraging, in order to obtain authority to provide long distance service. The Commission has traditionally viewed geographical deaveraging as presumptively unjust, unreasonable, and discriminatory, and has recently reaffirmed its opposition to the practice in a proceeding affecting all providers of long distance services. In the

Matter of the Petition of the Office of the Attorney General for an Order Concerning Geographically Deaveraged Long-Distance Rates, Docket No. P-999/C-88-615, ORDER GRANTING PETITION AND REQUIRING FILING (November 23, 1988). To qualify for a certificate of authority, the Company must either file geographically averaged rates or demonstrate good cause to justify its deaveraged rates.

An additional barrier to granting a certificate of authority is the Company's failure to comply with the Secretary of State's registration requirements for foreign corporations doing business within the state. The Company has assured the Commission it has nearly completed the registration process. Proof of compliance must be submitted prior to the granting of a certificate of authority.

In all other respects, the Company qualifies for a certificate of authority. Its management and financial condition are stable and demonstrate an ability to provide reliable service and to respond promptly to customer complaints. Its technical facilities are capable of providing safe, high quality service. Its proposed rates, with the exception of the deaveraging noted above, are fair and reasonable.

Upon receipt of a tariff filing eliminating geographical deaveraging, proof of compliance with the foreign corporation registration requirements of the Secretary of State, and receipt of the refund filing discussed below, the Commission will issue the Company a certificate of authority to provide long distance service.

Authority to Provide Alternative Operator Services

The Company's filing on alternative operator services meets most of the public safety and consumer protection concerns set forth in previous Orders granting interim operating authority. See, for example, In the Matter of a Filing by Teleconnect Company to Introduce Operator Services and Rates, Docket No. P-478/M-88-359, ORDER AFTER RECONSIDERATION GRANTING INTERIM AUTHORITY TO TELECONNECT COMPANY TO PROVIDE OPERATOR SERVICES (December 23, 1988).

There are two consumer protection issues raised by the filing which must be addressed before interim authority is granted. One is that contracts with host facilities must prohibit blocking end users' access to other operator services providers. The other is that contracts with host facilities must require that rate and service information be prominently displayed near each telephone. These requirements are necessary to ensure end users meaningful choice in selecting operator services providers and to protect competition in the operator services market.

Finally, the operator services rates filed by the Company reflect unreasonable price discrimination in that customers placing interLATA calls would pay AT&T's operator services rates, while customers placing intra-LATA calls would pay Northwestern Bell Telephone Company's operator services rates. Unless the Company can demonstrate that LATA boundaries bear a substantial and reasonable relationship to the pricing of operator services, this rate differential must be eliminated.

In all other respects, however, the Company's filing demonstrates a likely ability to provide reliable

operator services at fair and reasonable rates. Upon correction of the geographical deaveraging, price discrimination, and consumer protection problems noted above, and upon receipt of the refund filing discussed below, the Commission will grant the Company interim operating authority to provide alternative operator services.

The Issue of Refunds

The Department also recommended that the Company be required to refund all intrastate revenues earned through the provision of long distance service or alternative operator services during any period when the Company did not have Commission authorization to provide the service in question. The Company has proposed to refund the difference between the rates ultimately approved by the Commission and the rates previously charged, or to implement "a refund plan consistent with refund plans approved for other operator service providers." Letter of Jack A. Pace, Company's attorney, dated March 23, 1989.

The Commission agrees that it is of the utmost importance for all companies seeking to provide telephone services within the State of Minnesota to request Commission authorization and to comply with all applicable statutory and regulatory requirements. At the same time, however, it is not clear that ordering a refund of all intrastate revenues collected prior to receipt of operating authority is the most appropriate remedy or that ordering such a refund is consistent with prior Commission practice.

The Commission will therefore require the Company to make a filing addressing the refund issue, including a proposal for distributing any amounts it considers subject to refund. The Commission would urge the Company to consult with the Department in preparing its refund filing, and will direct the Department to examine the filing and file a report and recommendation with the Commission.

ORDER

1. Within 30 days of the date of this Order, the Company shall make a supplementary filing including the following items:
 - a. The elimination of geographical deaveraging from its long distance rates or a showing of good cause that its deaveraged rates are just and reasonable under Minn. Stat. § 237.06 (1988);
 - b. Proof that the Company has complied with the Minnesota Secretary of State's registration requirements for foreign corporations seeking to do business in the State of Minnesota;
 - c. The elimination of price discrimination between operator services provided in

connection with interLATA calls and operator services provided in connection with intra-LATA calls, or, in the alternative, a demonstration that LATA boundaries bear a substantial and reasonable relationship to the pricing of operator services;

- d. Proof that the Company has amended its contracts with host facilities to prohibit blocking of end users' access to other operator services providers and to require that rate and service information be prominently displayed near each telephone; and
 - e. A refund plan pertaining to intrastate revenues collected before the Company received Commission authorization to offer telecommunications services within the State of Minnesota.
2. Within ten days of the Company's refund filing, the Department shall file a report and recommendation setting forth, among other things, how the Commission has dealt with other companies which have offered telecommunications services prior to obtaining Commission authorization.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Mary Ellen Hennen
Executive Secretary

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