

P-5169/PA-95-249

ORDER DENYING PETITION WITHOUT PREJUDICE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Tom Burton  
Marshall Johnson  
Dee Knaak  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Request by NeTel, Inc. for a  
Certificate of Authority to Resell Long  
Distance Services

ISSUE DATE: January 9, 1996

DOCKET NO. P-5169/PA-95-249

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PREJUDICE

**PROCEDURAL HISTORY**

On March 22, 1995, NeTel, Inc. (NeTel or the Company) submitted its request for a certificate of authority to provide long distance and directory assistance services.

On May 23, 1995, the Minnesota Department of Public Service (the Department) filed initial comments. The Department related that it had requested but not received from NeTel information about the Company's financial status, customer service arrangements, proposed tariff provisions, and other related matters. The Department stated that without the requested information it could not adequately analyze the Company's application. The Department recommended disapproval without prejudice.

Subsequently, NeTel provided information in response to several but not all of the Department's information requests.

On June 22, 1995, the Department filed comments. The Department continued to recommend disapproval of the Company's request. The Department cited concerns regarding the Company's multi-level marketing services program and lack of adequate financial information to support its request.

On September 5, 1995, NeTel submitted responses to the Department's Information Request Nos. 30 and 31.

On September 13, 1995, the Department filed comments, continuing to recommend disapproval. The Department based its recommendation on concerns about NeTel's marketing program and financial statements. The Department noted that the same service quality concerns raised by the Commission in its September 25, 1990 Order in Docket No. P-3020/NA-90-90 may also exist in the current case and that the Company still had not provided adequate financial information to support its application for authority.

On November 27, 1995, NeTel submitted comments, including an unaudited 6/30/95 balance sheet, an unaudited income statement through 6/30/95, and a further explanation of its marketing program. NeTel also noted that a Company representative would attend the December 19, 1995 Commission meeting.

On December 4, 1995, the Department filed responsive comments affirming its recommendation that NeTel's application be denied. The Department stated that it had reviewed the information provided by the Company in its November 27, 1995 filing. The Department stated that based on its review, it was not clear that the Company's proposed rates would be sufficient to cover the costs of providing long distance service, including the costs of the multi-level marketing program. The Department reiterated its service quality concerns related to the Company's multi-level marketing program.

On December 19, 1995, the Commission met to consider this matter.

### **FINDINGS AND CONCLUSIONS**

The Commission has reviewed all the information supplied by NeTel to date in its several filings over a nine-month period. Upon its review of this matter, the Commission finds that the financial information supplied by NeTel to date is insufficient to support the conclusion that the Company is likely to be able to provide the stable ongoing service that Minnesota telephone customers deserve. In these circumstances, the Commission is unable to find that granting NeTel a certificate of authority to resell long distance service is in the public interest.

At the December 19, 1995 hearing, the Company representative referred to an additional factor which, in the representative's view, bolstered the Company's financial condition. The representative stated that the Company would be able to provide evidence of that factor in the near future.

Given the length of the review conducted by the Department and the Commission in this matter, the Commission finds it appropriate at this time to judge the matter on the record to date and deny the Company's petition. The Commission's denial is without prejudice, however, so the Company is free to recommence its action at any time. The Commission will judge that second petition (and the strength of the evidence the Company chooses to file to support that petition) on the merits.

In addition, at the December 19, 1995 hearing the Commission once again expressed concern about multi-level marketing programs, such as the one proposed by NeTel in this matter.<sup>1</sup> The Commission's concern is for the potential negative impact of such programs upon the quality and responsiveness of customer service. The Commission believes that such programs involve an unnecessarily high risk of compromising the quality of customer service.

In response, the Company expressed a willingness to simply delete the multi-level aspect from its marketing proposal. While such a modification is acceptable to the Commission in principle, the Commission believes that this modification (as with the Company's intention to supply stronger financial information) is best accomplished as part of an entirely new petition.

### **ORDER**

1. The petition by NeTel, Inc. for a certificate of permanent authority to provide long distance and directory assistance services in Minnesota is denied, without prejudice.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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<sup>1</sup> See, e.g. In the Matter of a Request for a Certificate of Convenience and Necessity to Provide Operator, Directory Assistance and Long Distance Services, Docket No. P-3020/NA-90-90, ORDER DENYING CERTIFICATE OF PUBLIC CONVENIENCE, ORDERING COMPANY TO CEASE AND DESIST SERVICE, AND REQUIRING NOTICE AND REFUND (September 25, 1990), pages 4-5. .