

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-864
American Public Communications, Inc.,)
Garland, Texas who seeks to operate) GRANTED IN PART
as a reseller of interexchange)
telecommunications services within)
the state of Nebraska.) Entered: April 16, 1991

OPINION AND FINDINGS

BY THE COMMISSION:

By its application filed October 2, 1990, American Public Communications, Inc., Garland, Texas, seeks authority to operate as a reseller of interexchange telecommunications services within the state of Nebraska.

Notice of the filing of the application was published pursuant to the provisions of the Commission's Rules and Regulations. No protests to the application were filed.

Pursuant to notice required by law, public hearing was held on the application on December 11, 1990, in the Commission Hearing Room, Lincoln, Nebraska.

Upon consideration of the application, the evidence adduced at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Applicant is a privately held corporation within the state of Texas. The name under which applicant will do business is American Public Communications, Inc., with the company referred to as "APC". Applicant is in the business of offering telecommunications services.

2. Mr. Kerry Porter, Chief Operating Officer, testified for applicant. Mr. Porter testified that he has 25 years of experience in the telecommunications and computer industry with degrees in computer science and electrical engineering. The applicant was incorporated in July, 1989. From that time it has grown from roughly \$200,000 to nearly \$3,000,000 a month in revenues. The Company started out in the payphone business, equipment distribution, national account distributorships and then worked into the operator service business. Operator service accounts for 80% of its business and the applicant expects to launch a national one plus program in the future. Applicant operates in 25 states with approximately 45 corporate employees and 250 operators. The operators are located in Garland, Texas, Portland, Oregon and Tampa, Florida. Most customers are in the hospitality and transient lodging industry. They have also begun to market their services to penal institutions.

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3. Applicant is aware of the rules of the Nebraska Public Service Commission in regard to operator service providers. They brand their calls either with a live voice or a computer voice. They allow access to other carriers. They have procedures for emergency services. Where allowed by law the company does allow surcharges on calls. They would recommend one dollar in Nebraska. The rates they have filed reflect AT&T rates plus 20%.

4. Mr. Porter testified about the financial situation of the company. Financial information in the application and testimony reflects about a 40% growth in revenues per month. Another aspect of its financial picture was the sale of revenue purchase agreements, whereby, for a specific sum, one is allowed to share in the revenue stream for a period of years from a certain number of telephones. These agreements are contracts with investors and are treated as liabilities of the company. When questioned about these agreements, Mr. Porter testified that, according to the SEC, it is not an investment type of instrument. In the late-filed certified audit, the Commission notes that the company decided to take substantial charge offs and have changed their accounting methods with regard to the revenue purchase agreements for tax purposes.

5. Applicant has requested both interLATA and intraLATA authority. In its enactment of Section 86-805 Neb. Revised Statutes, the Legislature established certain minimal standards of proof in order to obtain a certificate of authority. Section 75-604 Neb. Revised Statutes continues to require that the Commission find that existing service is inadequate before granting a certificate of authority for intraLATA service. In this case, the Commission finds that applicant has met its burden of proof for interLATA authority; that is, it has provided the information required and it does possess adequate financial and technical resources to provide the proposed service. InterLATA authority should therefore be granted.

6. On the other hand, applicant has not shown that existing service is inadequate or that its proposed service will be of benefit to users. The evidence shows that its rates are 20% higher than rates of AT&T, that surcharges are allowed for hotels, motels and other aggregators and, that in the case of penal institutions, the user is simply unable to access the service of any other carrier. For these reasons, intraLATA authority must be denied. If the Commission were not constrained by the provision of Section 86-805, the application would be denied in total.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-864 be and it is hereby granted in part and American Public Communications, Inc., Garland, Texas, be and it is hereby authorized to provide interLATA interexchange telecommunications services within the State of Nebraska.

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IT IS FURTHER ORDERED that intraLATA authority be and it is hereby denied.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's Official Certificate of Public Convenience and Necessity to furnish the service authorized herein.

MADE AND ENTERED at Lincoln, Nebraska this 16th day of April, 1991.

COMMISSIONERS CONCURRING:

Daniel H. Gruwiler
Duane D. Gay

//s//Frank E. Landis, Jr.
//s//James F. Munnelly
//s//Eric Rasmussen

NEBRASKA PUBLIC SERVICE COMMISSION

James F. Landis Jr.
Chairman

ATTEST:

John R. King
Executive Director