

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of)	Application No. C-914
AFFINITY FUND, INC. Brookfield,)	
Wisconsin which seeks authority)	GRANTED AS
to provide intrastate inter-)	MODIFIED
exchange telecommunications)	
resale services in Nebraska.)	Entered: April 7, 1992

APPEARANCES

For the Applicant	For the Commission
Stephen H. Nelsen, Esq.	Jeffrey P. Goltz, Esq.
CLINE, WILLIAMS, WRIGHT, JOHNSON	Legal Counsel, NPSC
& OLDFATHER	300 The Atrium Building
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(402) 474-6900	Lincoln, NE 68509
	(402) 471-3101

By application filed January 22, 1992, Affinity Fund, Inc. of Brookfield, Wisconsin ("Affinity") seeks authority to provide intrastate interLATA and intraLATA interexchange telecommunications resale services in Nebraska. Affinity's principal office is:

Affinity Fund Inc.Inc.
675 North Brookfield Road
Brookfield, Wisconsin 53045

The applicant's registered agent is:

Prentice-Hall Corporation System, Inc.
1141 "H" Street
Lincoln, Nebraska, 68508.

Notice of the application was published January 23, 1992 in the OMAHA DAILY RECORD in accordance with the Commission's procedural rules. No protests to the application were received. Hearing on the application was held March 24, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown.

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

BY THE COMMISSION

Upon consideration¹ of the application, the governing statutes and rules, the evidence adduced at the hearing, and being fully informed in the premises, the Commission is of the opinion and finds:

Maurie E. Daigneau, President and Chief Operating Officer, testified on behalf of the applicant. He is a graduate of Northwestern University and has a B.S. in Education.

Affinity is a privately held company incorporated in Florida April 26, 1990 as an "S" corporation. The applicant's articles of incorporation are contained in Exhibit 1 (which is simply a copy of the original application) and are identified as Exhibit 1A. Exhibit 2 is a copy of the applicant's certificate to do business as a foreign corporation issued by the Nebraska Secretary of State January 27, 1992. The company's books and records are maintained at its operations office, 5730 Bowden Road, Suit 307, Jacksonville, Florida, 32216. Daigneau stipulated in his testimony that the broad application for authority sought *does* include application for both interLATA and intraLATA resale.

The filed application, upon which the published notice was based, specifically does not seek authority to provide alternate operator service ("AOS"). Daigneau confirmed this point in his testimony. Parenthetically, we note that this Commission has consistently taken the position that a general application for authority to operate as a reseller does not include authority to conduct AOS. AOS must be petitioned for² as part of the application before we will consider it. A grant of authority in this application does not, therefore, authorize AOS. Affinity, naturally, may petition for such authority in the future.

Affinity has no customers in Nebraska pending the application's approval. Daigneau estimated the applicant has between 9,500 and 10,000 customers. No state commission has rejected an Affinity application for reseller authority, nor

¹ Interexchange reseller applications are governed by Neb. Rev. Stats. §§75-604 and 86-805 (1990 and 1987 Reissues, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

² We observe that a late-filed amendment to add AOS to the application is an inadequate solution; the published notice of the application would not then accurately reflect the authority sought in the application.

has a formal complaint been filed against it. There will be no equipment nor employees located within the state. Its billing and customer service is provided by a sub-contractor, Macrologic of Denver, Colorado. In lieu of technical qualifications of its own personnel, Affinity instead relies on the technical quality available from the underlying carrier. Daigneau testified that the applicant's focus on marketing through affinity groups seeking residential and small business switched access reduces the need for more sophisticated technical qualifications. Daigneau said the applicant will never become a facilities based reseller and that customers actually rely on the underlying carrier for correction of service problems. We would prefer a greater showing of technical competency on the applicant's part, but this failure, when taken with the application as a whole, is not fatal.

Sprint and MCI are the underlying carriers used by Affinity at this time. Its basic service is Dial 1+. Travel card service is also available, as well as 800 service. The applicant concentrates on providing service to residential and small business customers. The applicant seeks to provide service in Nebraska wherever equal access exists.

Of interest is the means by which the applicant markets itself. Affinity generates customers through nonprofit organizations. In return for helping market the service and for obtaining a customer for Affinity, a non-profit organization recovers a fee from the applicant for as long as the customer stays with Affinity.

Affinity presently operates in Alabama, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wisconsin. Applications to do business are pending in Arkansas, Georgia, Louisiana, Kentucky, and New Mexico.

Copies of its balance sheet and profit and loss statement were introduced as Exhibit 3. These documents were prepared by a professional accounting firm, Presser, Lahnen & Edelman. We note with interest the firm's disclaimer:

"Management has elected to omit substantially all of the disclosures and the statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and the statement of cash flows were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters."

Generally, the balance sheet shows total assets and liabilities (as of December 31, 1991) to be \$486,308. The assets include \$356,172 in accounts receivable, \$59,537 in cash, and net property and equipment valued at \$3,331. The applicant places a value of \$67,268 on its long distance contract with the underlying carriers. The major portion of the applicant's liabilities is its accounts payable in the amount of \$321,790.

The statement of profits and losses for the year ending December 31, 1991 shows that the applicant earned revenues of \$1.475 million and a gross profit of \$403,398. After expenses, Affinity showed a net operating loss of \$8,872.

Considering the newness of this applicant and the unusual niche market in which it operates, the financial condition is not totally surprising. We have, so far, not been willing to penalize young start-up resellers on the theory that, by their very newness, a certain degree of unprofitability is likely while they build a client base. The theory of reseller competition propounded by the Legislature in L.B. 835 (Laws 1986) will certainly be tested by applicants such as this one.

PROPOSED INTRASTATE RATES

Option 1:

Residential Dial 1 - Nebraska

Day	Evening	N/W	Holiday
\$0.2150	\$0.1975	\$0.1850	\$0.1850

(per minute rates)

Installation fee: \$0

Monthly Recurring Charge Per Account: \$0

Calls are calculated in six second increments or tenths of a minute with no minimum call length. There is no rounding up to the next higher whole minute.

Option 2:

Business Dial 1 - Nebraska

Day	Evening	N/W	Holiday
\$0.1960	\$0.1960	\$0.1960	\$0.1960

(per minute rates)

Installation fee: \$0

Monthly Recurring Charge Per Account: \$0

Calls are calculated in six second increments or tenths of a minute with no minimum call length. There is no rounding up to the next higher whole minute.

Option 3:

Travel Service - Nebraska

From any point in Nebraska to points in Nebraska, the rates* are:

Application No. C-914

Page -5-

Day**	Evening**	N/W**	Holiday**
\$0.2150	\$0.1650	\$0.1650	\$0.1650

* Rates are in cents per minute and billed in tenths of a minute from start of the call.
** A per call surcharge of \$.25 per call will also be applied.

Option 4:**800 Service - Nebraska**

From points in Nebraska to Customer's location, the rates* are:

Monthly Usage	Day	Evening	N/W	Holiday
0-4.99 hrs	\$0.2270	\$0.2270	\$0.2270	\$0.2270
5-24.99	0.2240	0.2240	0.2240	0.2240
25-74.99	0.2000	0.2000	0.2000	0.2000
75-149.99	0.1990	0.1990	0.1990	0.1990
150+	0.1980	0.1980	0.1980	0.1980

* Rates are in cents per minute and billed in six second increments or tenths of a minute from the start of a call. The monthly usage is for combined intrastate and interstate service.

A monthly service charge of \$15 per 800 number also applies. There are no sign-up or installation charges.

Option 5:**Directory Assistance**

\$0.60 per intrastate inquiry, up to two requests per call. Except that this directory assistance rate shall be in compliance with Nebraska law.

The applicant's proposed tariff which is part of its application is in accordance with the Commission's rules and regulations, although it contains typographical errors and improperly identifies this Commission by other names. These errors should be corrected in the filing of the official tariff. The tariff appears reasonable in light of the proposed service.

Based on the testimony, the exhibits, and the proposed tariff, the application is fair and reasonable, is in the public interest, and should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-914 be, and it is hereby, granted and Affinity Fund, Inc., Brookfield, Wisconsin be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the State of Nebraska.*

IT IS FURTHER ORDERED that applicant shall file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) the annual report to stockholders, and (c) for the state of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that applicant file an updated and corrected tariff prior to offering service pursuant to the certificate granted in this order.

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 7th day of April, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel G. Griville
Duane D. Gay

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

Frank E. Landis, Jr.
Chairman

ATTEST:

Arthur R. [Signature]
Executive Director