

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)	Application No. C-947
AmeriVision Communications, Inc.,)	
Oklahoma City, Oklahoma which seeks)	GRANTED
authority to operate as a reseller)	
of interexchange services in the)	
State of Nebraska.)	
)	Entered: March 9, 1993

APPEARANCES

Carl Thompson, Vice President
Pro Se
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Oklahoma, City, OK 73149

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P.O. Box 94927
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PRELIMINARY MATTERS

This application comes before the Commission pursuant to an application filed September 8, 1992 by AmeriVision Communications, Inc. (ACI) of Oklahoma City, Oklahoma. The Applicant's address has changed to the one noted above since the application was filed. The company's books and records are maintained at the above-noted address. ACI seeks to operate as an intrastate interexchange reseller of interLATA and intraLATA telecommunications services in Nebraska. CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508 is ACI's registered agent.

The Omaha DAILY RECORD published notice of the application September 9, 1992 according to the Commission's procedural rules. No one protested. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska January 21, 1993 with appearances as shown. Commissioner Gay chaired the proceeding.

BY THE COMMISSION

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

Upon consideration of the application, the governing statutes and rules¹, the evidence adduced at the hearing, and being fully informed, the Commission is of the opinion and finds:

Nebraska was divided into three Local Access Transport Areas (LATAs) as a result of the terms of the Modified Final Judgement (MFJ) issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co., 552 F.Supp. 131 (D.D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983)

¹Interexchange 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.

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and United States v. American Telephone & Telegraph Co., 569 F.Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

While Neb. Rev. Stat. 75-604, by its language, refers to local exchange service, the Nebraska Supreme Court in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb. 268, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of the statute. This was recognized by the Legislature in L.B. 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

The Applicant's witness, Carl Thompson, testified, and the pleadings reflect, that the Applicant seeks both interLATA and intraLATA authority. The filed application, upon which the Omaha DAILY RECORD notice was based, does not seek authority to provide Alternate Operator Service (AOS). We observe the Commission has consistently held an application for reseller authority does not include AOS unless specifically petitioned for in the application.²

Thompson is ACI's Vice President. He has worked for ACI since May, 1992. He began as a sales representative in the telecommunications field four years ago with ACI's forerunner, AmeriTel, Inc. ACI was incorporated in Oklahoma in May, 1992 and is a privately-held, stand-a-lone corporation. AmeriTel was also a reseller, but lacked business acumen and capital. The company was purchased by its current owners and its name changed to ACI. ACI's corporate officers are: Mark McGuire (President), Tracy Feeny (Vice President), Aubrey Price, and Thompson. These three individuals own approximately 55% of the company. Other shareholders do not exceed 2% ownership individually.

The following states have granted authority to ACI (or to AmeriTel): California, New York, Washington, Oregon, Florida, Illinois, Louisiana, Minnesota, Texas, Wisconsin, New Jersey, Oklahoma, North Dakota, Indiana, and Pennsylvania. Applications are pending in: Mississippi, Nevada, North Carolina, New Mexico, Ohio, and South Carolina. No state commission has denied an ACI application to date.

According to Thompson, no formal or informal complaints have been lodged against ACI. The company offers two resale services (1+ and a travel card). Both residential and business subscribers are welcome. US Sprint L.P. and WilTel are ACI's underlying

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

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carriers. ACI has letters of credit on file with both carriers. On an intrastate calling basis, ACI's rates will match AT&T's. But ACI will offer a 4% to 8% lower rate on interstate calls (some options could make this drop to as much as 15% below AT&T's rates).

The company provided several financial documents which were prepared internally by ACI's accountant. This information shows:

Sept. 30, 1991		September 30, 1992	
Assets	\$1.090M	Assets	\$.911M
Total Liabilities & Equity	1.090M	Total Liabilities & Equity	.911M
YTD Income (Jan.-Sept. 1991)		YTD Income (Jan.-Dec. 1992)	
Total Income	.580M	Total Income	.513M
Service Costs	.500M	Service Costs	.400M
Gross Profit	.080M	Gross Profit	.113M
Operating Expenses	.186M	Operating Expenses	.050M
Net Income	-.106M	Net Income	.082M
Month of Sept. 1991		Month of Sept. 1992	
Total Income	.173M	Total Income	.182M
Service Costs	.152M	Service Costs	.135M
Gross Profit	.021M	Gross Profit	.047M
Operating Expenses	.032M	Operating Expenses	.037M
Net Income	-.010M	Net Income	.010M

Note: The YTD 1992 figures are pro forma.

The Applicant's proposed tariff which is part of its application is in accordance with the Commission's rules and regulations. The tariff appears reasonable in light of the proposed service.

The facilities of the Applicant now in place are providing interstate service. Applicant proposes to construct no facilities for use in intrastate service; therefore, no existing facilities will be duplicated if this application is granted for reseller service.³

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. We note, however, that the financial records of this Applicant are sketchy. We therefore additionally will require that an annual balance sheet and income statement be

³See Section 75-604.

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provided to the Communications Department each year for the next three years as a condition to our grant of authority.⁴

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-947 be, and it is hereby, granted and AmeriVision Communications, Inc. of Oklahoma City, Oklahoma 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 the 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. The Applicant shall also file an annual balance sheet and income statement for each of the next three years.

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

IT IS FINALLY ORDERED that this order be, and it is hereby, made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 9th day of March, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Unwillen

//s//Rod Johnson
//s//Frank E. Landis

Frank E. Landis
Chairman

ATTEST:

John R. Kij
Executive Director

⁴To begin with the year ending 1993 and due no later than April 30 of the subsequent year.