

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Application of) Application No. C-953
Resurgens Communications Group,)
Inc. of Atlanta, Georgia which) GRANTED IN PART
seeks authority to operate as a) DENIED IN PART
resale carrier of operator-assisted)
interexchange telecommunications)
services in the State of Nebraska.) Entered: February 16, 1993

APPEARANCES

Dennis E. Bay
Senior Vice President
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Atlanta, Georgia 30326

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NPSC Communications Dept.
P.O. Box 94927
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PRELIMINARY MATTERS

By application filed October 9, 1992, Resurgens Communications Group, Inc. (Resurgens) of Atlanta, Georgia seeks authority to operate as a resale carrier of operator-assisted interexchange telecommunications services in the State of Nebraska. The Applicant's principal place of business is noted above. Notice of the application was published October 12, 1992 in the Omaha Daily Record in accordance with the Commission's rules of procedure. No one protested the application. A hearing on the matter was held December 18, 1992 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown.

At the hearing, Exhibits 1, 2, 3, Supplemental Exhibit 4, and 5 were offered and accepted. These exhibits included a copy of the Applicant's articles of incorporation, certificate to do business in Nebraska as a foreign corporation, and a proposed tariff. The filed application, upon which the published notice was based, seeks a certificate to provide alternate operator service (AOS) and intrastate interLATA and intraLATA interexchange telecommunications as a resale carrier.

BY THE COMMISSION

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

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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) 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.

Dennis Bay, the Applicant's Senior Vice President, testified on its behalf. Bay has been Resurgens Vice President for Marketing since June, 1989. From January, 1985 until June, 1989, he was Vice President of marketing for Advanced Telecommunications Corporation and from December, 1983 until January, 1985 he was President of Marketing for TA Communications, Inc. Bay is a graduate of Washington University of St. Louis and has worked a total of 30 years in the telecommunications field.

Resurgens is a long distance telecommunications company which processes and transmits operator assisted long distance telephone

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. AOS is governed by Rule 003.16.

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calls made from multi-telephone facilities such as hotels and hospitals and from pay telephones. The company has over 600 employees. Resurgens also provides operator services and billing and collection services to other long distance companies. Resurgen's subsidiary, Com Systems, Inc. is a diversified telecommunications company which provides long distance direct dial and operator-assisted calling, as well as other enhanced services to customers located in the western United States. Through its subsidiary, Southern Cellular Telecom, Inc., Resurgens also markets and services cellular telephones, facsimile machines, and other telecommunications products. Resurgens has also signed a letter of intent with Metromedia Communications Corporation providing for a merger of the two companies.

Resurgens and its predecessor entities have provided telecommunications services since 1985. Resurgens now provides intrastate services in 24 states, interstate services throughout the continental United States, and international service. Five of the company's officers worked together as senior officers of Advanced Telecommunications Corporation and its predecessor, TA Communications, Inc., from 1982 to 1988.

Resurgens was incorporated in Georgia in 1988. It is not a part of any holding company and is publicly held. The company's corporate officers are: John D. Phillips (CEO), Michael Marshall (Chairman), George Vasilakos (President), Bay, Hobart Corwin (Chief Financial Officer), Joan Merrill (V-P for Administration), Stephen Rawls (V-P for Engineering Services), and Ronald Brooks (V-P for Sales). The company's Board of Directors consists of: Phillips, Vasilakos, Marshall, Carl Sanders, Robert Buckley, and Rex Licklider. The board members are the company's major stockholders, although only Marshall and Phillips each hold more than 5% of the stock.

The application before the Commission and Bay's testimony makes clear that the Applicant is an AOS provider. While the Applicant seeks common carrier resale authority, Bay testified Resurgens would not provide reseller service in Nebraska immediate-

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ly upon a grant of authority to do so by the Commission and no sooner than June, 1993. The Commission's past practice has been to deny applications for reseller authority where the Applicant was not prepared to offer the service upon a grant of authority. See, e.g. Application No. C-942, Application of Lubbock Radio Paging Service, Inc. dba Stenocall (November 5, 1992). Resurgens argued at the hearing that the Commission should look favorably on the request for reseller authority because of the company's pending merger with Metromedia and because the premature authorization would aid Resurgens in establishing a sales force to sell the product.²

As reported in the company's filed Securities and Exchange Commission Form 10-Q³, Resurgen's statement of operations shows revenues for the three month period ended September 30, 1992 of \$39.6 million. In comparison, revenues for the three month period ending September 30, 1991 were \$6.9 million. Supplemental Exhibit No. 4 (covering 1991 and the first six months of 1992) shows the company had total assets of \$34.44 million (1991) and \$126.9 million (first half of 1992). In addition, Supplemental Exhibit No. 4 shows a revenue growth as follows: 1990 - \$8.538 million; 1991 - \$8.831 million, and 1992 (first half) - \$36.715 million. The dramatic jump in revenues and assets was explained by Mr. Bay as being caused by Resurgen's acquisition of Com Systems, Inc. and internal growth from Resurgen's increased sales. In 1992 the company showed a net income of \$3.266 million.

Resurgens proposes to offer in Nebraska contracts with subscribers such as hotels, motels, hospitals, and private pay telephones, to provide operator assisted long distance service 24 hours a day, seven days a week, for telephone calls placed from its subscribers' locations. Upon contracting with a subscriber, Resurgens installs automatic dialing equipment which automatically directs the operator assisted long distance calls from the

²Resurgens does offer 1+ resale of long distance service in California, Arizona, Washington and other western States.

³(dated November 13, 1992)

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subscriber's premises to Resurgens. Resurgens's switches are located in Ft. Lauderdale, Florida; Nashville, Tennessee; Reno, Nevada; Los Angeles, California; and San Antonio, Texas.

All calls, both live operator and automated, are branded prior to the time billing begins. Resurgens accepts LEC calling cards with which it has billing and collection agreements and other credit cards such as MasterCard. Resurgens purchases all of its long distance transmission services from other carriers, including AT&T, ATC, Metromedia, and Sprint.

In regard to its AOS service, Resurgens enters into agreements with its subscribers which provide for the payment of commissions by Resurgens to the subscriber based upon billings for calls made from the subscriber's premises. Resurgens generally pays commissions of 10% to 15% of such billings to its subscribers. Resurgens pays owners of pay telephones commission of 15% to 20% of such billings.

Resurgens has billing and collection agreements with each of the seven Regional Bell Operating Companies (RBOCS) and 22 Bell Operating Companies (BOCs), as well as 13 major independent telephone companies and one credit card issuer, under which these companies bill the callers for operator assisted telephone calls processed and transmitted by Resurgens.

The Applicant currently has six operator service centers in the United States. Each operator receives 80 hours of classroom instruction prior to working with callers. All equipment and software owned by Resurgens in providing long distance service are serviced by an in-house technical staff. Maintenance and repair of facilities leased from interexchange carriers is the responsibility of the providers and is subject to the provisions of their respective tariffs.

Customer service requests are handled by a customer service department which can be reached via an 800 number during standard business hours.

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The Applicant employs a similar tariff in all states where it operates, subject to individual state requirements. The tariff is time and distance sensitive, message-rated, and has an additional flat charge applied for operator handling or credit card usage.

Other than as described below, Resurgens has not been involved in any complaint proceeding or any other investigatory or enforcement proceeding involving the business operation of Resurgens or any of its officers, directors, principals, or shareholders. By order dated April 16, 1991, in Docket No. FCU-90-2, the Iowa Utilities Board found Resurgens violated the Board's posting rules for pay telephones, although the violation was found by the Board to be unintentional.

The Applicant's proposed tariff which is part of its application is in accordance with the Commission's rules. 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 in part. We grant the application as to alternate operator services. We deny the application for reseller authority on the grounds the Applicant does not intend to provide such service in Nebraska at this time.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-953 be, and it is hereby, granted and Resurgens Communications Group, Inc. of Atlanta, Georgia is hereby authorized to operate as an alternate operator services provider pursuant to this certificate in both the interLATA and intraLATA telecommunications long distance market in the state of Nebraska.

IT IS FURTHER ORDERED that the Applicant's petition for interLATA and intraLATA intrastate interexchange telecommunications resale authority be, and it is hereby, denied for the reasons discussed previously.

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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.

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 16th of February, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G. Kravitz
Dwaine D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

Frank Landis
Chairman

ATTEST:

D. R. [Signature]
Executive Director