

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-961  
of Automated Communications, Inc. )  
dba AC America, Inc. of Denver, )  
Colorado which seeks authority to ) GRANTED  
operate as a reseller of interex- )  
change telecommunications services )  
in Nebraska. ) Entered: March 9, 1993

APPEARANCES

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PRELIMINARY MATTERS

By application filed November 2, 1992, Automated Communications, Inc. dba AC America, Inc. (hereinafter "AC America") of Denver, Colorado seeks authority to operate as a reseller of interexchange telecommunications services in Nebraska. The Applicant's business address is noted above and its registered agent is CT Corporation Systems, 206 South 13th Street, Suite 1500, Lincoln, Nebraska, 68508.

The Commission published notice of the application November 3, 1992 in the Omaha Daily Record. No one protested the application. Hearing was held January 11, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown. Commissioner Gay chaired the proceeding. At the hearing, Applicant's pre-filed exhibits A through J were offered and accepted. These exhibits include a copy of the applicant's articles of incorporation, certificate to do business as a foreign corporation, financial records, and a proposed tariff.

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 rules<sup>1</sup>, 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.

The Applicant's witness 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.<sup>2</sup>

Charles Ellis, Automated Communications, Inc.'s (ACI) Chief Financial Officer, testified on behalf of AC America. At the outset, we note that AC America is a subsidiary corporation and Automated Communications, Inc. (a subchapter S corporation) is its holding company. From review of the record, it should be noted that ACI is not a shell company. ACI is a reseller in its own right and has a substantial business history as a reseller.

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<sup>1</sup>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.

<sup>2</sup>We 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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Ellis has been employed by ACI for five years and has held is current position of the past year. He is a graduate of the University of Iowa, majoring in finance and accounting. He worked for Sears Roebuck for 15 years and was a business broker subsequent to that. Approximately eight years ago, he joined the forerunner to ACI and has stayed with the company to date.

ACI was incorporated in 1985. AC America (the subsidiary) is a Colorado corporation and was incorporated in November, 1992. AC America's corporate officers are Brad Kenyon (President) and Judy Van Essen (Vice President). Both entities are privately held. Wilbur Peters and Judy Van Essen are ACI's stockholders and AC America's stockholders consist of Van Essen (60% of the shares) and Peters (40%). The financial information provided in the application applies to ACI and AC America's operations are included within those records. As of this date, there are no separate financials for AC America.

ACI's reseller subscriber base is concentrated in Colorado (7,000-8,000 subscribers) and in Minnesota, where it maintains a separate office, (4,000-5,000). AC America has about 300-400 subscribers. The total subscriber base generates between eight and ten million minutes of long distance calling per month. ACI is a switched reseller (no property located in Nebraska). AC America is a switchless reseller.

ACI currently operates in Colorado, Illinois, Michigan, Minnesota, Montana, New Jersey, New Mexico, Oklahoma, Tennessee, Utah, Virginia, and Wyoming. Applications are pending or registrations have been made in Arkansas, Florida, Illinois, Indiana, Kentucky, Louisiana, Maryland, Minnesota, Missouri, New Mexico, New York, Ohio, Oklahoma, Wisconsin, and Wyoming. No state commission has rejected an ACI application.

State commissions have filed two complaints against ACI. In New Mexico, a subscriber was slammed to ACI. US West was determined to be the party in error, not ACI. In Minnesota, ACI attempted to obtain credit information per its ordinary application procedure. Minnesota law prohibits the kind of credit check tried by ACI. ACI altered its business practice to comply with Minnesota's requirements. In neither case was ACI sanctioned.

AC America will offer in Nebraska 1+ switched and dedicated long distance service, 800 service (both switched and dedicated),

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and a travel card. The Applicant will resell the long distance service of WilTel, Inc.<sup>3</sup>

The Applicant's financial exhibits (G,H,I, and J) show the following:

1. The exhibits apply to ACI since AC America has not yet been broken out of the parent company for purposes of financial statements.

2. With the exception of the December 31, 1991 statements, which were prepared by an independent CPA firm (Bailey, Saetveti, and Noven), the remaining documents were internally produced. The company does not produce annual reports; therefore, none is available.

Year Ended October 31, 1992	
ASSETS	\$3.386 million (includes \$1.610 million in physical plant)
LIABILITIES & STOCK-HOLDERS' EQUITY	\$3.386 million (includes \$734,722 in deferred gain on a no compete agreement)
Sales	\$13.655 million
Gross Profit	\$6.251 million
Expenses	\$6.090 million
Net Income	\$161,026
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Year Ended September 30, 1992	
Sales	\$12.462 million
Gross Profit	\$5.719 million
Expenses	\$5.546 million
Net Income	\$173,666
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Year Ended August 31, 1992	
ASSETS	\$3.598 million (includes \$1.568 million in physical plant)
LIABILITIES & STOCK-HOLDERS' EQUITY	\$3.598 million
Sales	\$11.081 million
Gross Profit	\$5.111 million
Expenses	\$4.930 million

<sup>3</sup>WilTel, Inc. is a certificated long distance provider in Nebraska.

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Net Income	\$180,503	(August 31, 1992 continued)
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	Year Ending December 31, 1991	
ASSETS	\$4.192 million	
	(includes \$1.995 million in physical plant)	
LIABILITIES & STOCK-HOLDERS' EQUITY	\$4.192 million	
	(includes \$225,000 loss in abandoning AOS service)	
Sales	\$9.761 million	
Gross Profit	\$4.774 million (December 31, 1991, continued)	
Expenses	\$6.532 million	
Loss From Operations	\$(1.757 million)	
Net Loss	\$(2.684 million)	
Cash (end of year)	\$28,214	
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There is no plan to locate equipment or personnel in Nebraska. Ellis testified that the Applicant's rates will be competitive with other resellers operating in Nebraska.

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. It is a flat rated tariff; there is no mileage/time rating in this tariff.

The facilities of the Applicant now in place are providing interstate service. Applicant does not propose to construct facilities for use in intrastate service; therefore no existing facilities will be duplicated if this application is granted.<sup>4</sup>

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-961 be, and it is hereby, granted and Automated Communications, Inc. dba AC America, Inc. of Denver, Colorado is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the state of Nebraska.

<sup>4</sup>See Section 75-604.

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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 9th of March, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

*Daniel G. Unwille*

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

*Frank Landis, Jr.*  
Chairman

ATTEST:

*D. R. Sig*  
Executive Director