

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-999
of Amerifax, Inc. dba Ameri-)	
Connect for authority to operate)	
as a Resale Common Carrier of)	GRANTED
telecommunications services in)	
the State of Nebraska.)	
		Entered: September 28, 1993

APPEARANCES

Applicant	Communications Department
Johnnie H. Craig, National Sales Director 6750 West 93rd Street Overland Park, KS 66212 913.341.8888	Jeffrey P. Goltz, Esq. Legal Counsel, NPSC P.O. Box 94927 Lincoln, NE 68509 402.471.3101

PRELIMINARY MATTERS

By application filed June 9, 1993, Amerifax, Inc. dba AmeriConnect ("AmeriConnect"), Overland Park, Kansas seeks authority to operate as a reseller of intrastate interLATA and interLATA interexchange long distance telecommunications services in Nebraska. AmeriConnect's principal office and the location where its books and records are kept is noted above and its registered agent is the CT Corporation, 206 South 13th Street, Lincoln, Nebraska, 68508.

Notice of the application was published in the Omaha Daily Record June 10, 1993 in accordance with the Commission's rules of procedure. No one protested the application. Hearing on the application was held September 1, 1993 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown.

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,

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.

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 Judgment 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, 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 that statute. This was recognized by the Nebraska Legislature when it approved L.B. 835 (LAWS 1986) because interexchange services (which include resellers) governed in part by Neb. Rev. Stat. §86-805 (Reissue 1987) are referenced to in Neb. Rev. Stat. §75-604 (Reissue 1987). For this reason, the Commission distinguishes between intraLATA and interLATA resale when considering reseller applications.

Mr. Johnnie R. Craig, the applicant's National Sales Director, appeared before the Commission. He has worked for several long distance type companies, including AmeriConnect, in the last ten years.

The applicant was incorporated in Delaware in 1988. AmeriConnect is a publicly held stand-alone corporation, the corporate officers of which are Robert S. Kaemmer (President and Chairman of the Board), Charles R. Sharp (Treasurer and Director), Janet M. Flynn (Secretary), and Richard K. Halford (Director).

The applicant has a single business office at the Overland Park address. At the hearing, the applicant's financial statements, the certificate to do business as a foreign corporation in Nebraska, and a copy of its articles of incorporation were entered into the record.

Craig testified (and the application reflects) that the company seeks interLATA authority. The filed application, upon which the Daily Record notice is based, *does not* seek a certificate to provide alternate operator service ("AOS"). We note this Commission has consistently held an

application for a reseller certificate does not include AOS unless specifically petitioned for in the application.²

The applicant is a switchless, non-facilities based interexchange resale carrier providing switched and dedicated interexchange telecommunications services primarily to medium and small businesses. AmeriConnect proposes offering these services in Nebraska through the facilities of Sprint. All network facilities used in this venture belong to other carriers, including Sprint. AmeriConnect receives detailed information on magnetic medium from the underlying carrier on which the traffic is placed. From this information, AmeriConnect obtains data for its billing services. AmeriConnect has a contract with Affiliated Computer Systems, Dallas, Texas which generates the billings for the applicant. No future facilities in Nebraska are contemplated nor will any employees be located within this state. The applicant resells 1+ switched service for outbound traffic, 1+ switched service for inbound traffic (800 Service), travel cards, and dedicated services.

To be profitable as a reseller, AmeriConnect has entered into a contract with Sprint requiring AmeriConnect to commit to a specific volume of usage of long distance services in order to qualify for a substantial discount which allows it to resell those services for a profit. The applicant then charges its customers rates below the underlying carrier's tariff rates for intrastate Nebraska calling. The difference between the rate paid by the customers and the discount received from Sprint provides the margin of profit. Craig projected subscriber savings of 15 to 20 percent below the average Sprint rate.

No state commission has rejected an AmeriConnect application for reseller authority, nor has a formal complaint been filed against it. As of the hearing date, the applicant was operating as a reseller in the following states: Arizona, California, Florida, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, and Virginia. The authority sought here in Nebraska is the same as obtained in those states. The applicant does not propose to provide service of a different type in this state.

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

Craig testified the applicant has approximately 2,500 subscribers to its service across the country in states where it currently operates. These subscribers are generating about 8,000 minutes and \$1.2 million worth of usage monthly.

The financial information provided by the applicant was marked as Exhibits E, E-1, E-2, and F and was compiled in-house by Janet Flynn, who is the company's Secretary, in anticipation of this hearing. The financial documents themselves were prepared by GrantThornton (sic), a Kansas City, Missouri CPA firm. Craig, relying on these exhibits, testified that AmeriConnect became profitable in 1992. From 1990 to 1993, the company's assets and liabilities and equities grew from approximately \$2.032 million to \$9.347 million. For the first three months of 1993, the company generated \$2.961 million in revenues and projects nearly \$12 million for all of 1993. For the same period, AmeriConnect had \$75,000 in net income and projected a \$300,000 net income for the year.

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 does not propose to construct 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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-999 be, and it is hereby, granted and Amerifax, Inc. dba AmeriConnect of Overland Park, Kansas be, and it is hereby, authorized to *operate as a resale carrier of intrastate interexchange interLATA telecommunications services in Nebraska.*

IT IS FURTHER ORDERED that the applicant file, in accordance with the applicable statutes, an annual report with this Commission consisting of (a) a copy of any report filed with

³ See §75-604.

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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 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 28th day of September, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Daniel G. Mueller

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

[Signature]
Chairman

ATTEST:

[Signature]
Executive Director