

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1115
Calls For Less, Inc., dba C.F.L. of)
Omaha, Nebraska seeking authority to)
operate as a facility based carrier)
of travel and debit card services) GRANTED
and a resale common carrier of tele-)
communications services and operator)
services within the state of)
Nebraska.) Entered November 29, 1994

APPEARANCES:

For the Applicant:

Theodore Kessner, Attorney
Crosby, Guenzel, Davis et.al
134 S. 13th St., Suite 400
Lincoln, NE 68508
(402) 434-7300

William D. Sapp, President
9915 S. 148th St.
Omaha, NE 68138
(402) 895-2202

Tim Jones, Vice-President
P.O. Box 1160
N. Sioux City, SD 57049
(605) 232-4195

For the Communications Department:

Deonne Niemack, Staff Counsel
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, NE 68509
(402) 471-3101

PRELIMINARY MATTERS

Calls For Less, Inc., dba C.F.L., of Omaha, Nebraska filed an application with the Commission on October 5, 1994. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service. The applicant also seeks authority to provide facility based travel and debit card services and operator services within Nebraska. The company's business address is in Omaha and is noted above. Notice of the application appeared in the Omaha Daily Record, October 7, 1994. CFL appeared before the Commission for a hearing, chaired by Commissioner Landis, November 10, 1994 in the Commission Hearing Room, Lincoln, Nebraska.

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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, 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 Modification of Final Judgement (the "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 LB 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 (part of LB 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

Mr. William Sapp, Chief Executive Officer/President, and Mr. Tim Jones, Vice-President, testified. Mr. Sapp has also served as the President of Sapp Brothers Trucking and Sapp Brothers Petroleum for several years. Mr. Jones has been in the telecommunications industry for many years and has been involved in selling, installation and programming with several telecommunication companies. Mr. Jones testified, and the pleadings reflect, the applicant seeks both intraLATA and interLATA authority. The filed application also seeks authority to provide AOS. We observe the Commission has consistently held an application for reseller authority does not include¹ AOS unless specifically petitioned for in the application.

¹We 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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CFL was incorporated in 1994 in Nebraska. Besides Mr. Sapp and Mr. Jones, CFL's officers include Mr. Lee Sapp, Vice-President; Mr. Allen Marsh, Treasurer and Kathleen Jones, Secretary.

The applicant has a switch in Nebraska to provide its travel and debit card services. Network services from the switch will be supplied by WilTel. All other services will be provided through MCI. CFL's first phase of business is to offer prepaid phone cards. The second phase will be 1+ service at the Sapp Brother Truck Stops and its franchised affiliates. The final phase, which is speculative at this point, will be to offer operator services.

CFL will begin to market its services at its truck stops which are located across the nation. Debit and travel cards will be offered at vending machines and over the counter.

Billing for card services will be provided from the company's in-house switch. All other services will be billed by magnetic medium from the carrier on which the traffic is placed. The company owns and operates equipment in order to process the billing. A third party billing company, Zero Plus Dialing, Inc. of San Antonio, Texas, will provide billing and collection for the applicant's operator services. With the exception of debit card services, advance deposits and payments are not required. Customers are able to call a toll-free telephone number for assistance with complaints.

The applicant is applying to become certified nationwide. Currently, applications are pending in approximately 22 states. No state commission has rejected a CFL application and no formal complaints have been filed against the company.

Financial information was provided to the Commission in the application. Earning projections estimate that it will take approximately 6.8 months for the company to recapture its initial investment in equipment and start-up costs. However, the company hopes to exceed its projections and break-even in approximately 5.5 months.

The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and Regulations. The tariff appears reasonable in light of the proposed service.

In conclusion, Mr. Sapp testified that CFL will offer a unique service to subscribers who travel frequently. Further, from working in the truck stop business, he stated that quality telecommunications services are essential for truckers. CFL will provide needed services and also improve the state of telecommunications in Nebraska.

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Based on the testimony, the exhibits, and the proposed tariff, the applicant has provided the requisite information, possesses adequate financial resources and is technically competent to provide telecommunication services. 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-1115 be, and it is hereby, granted and Calls For Less, Inc., dba CFL of Omaha, Nebraska is hereby authorized to operate as a resale carrier of intrastate interexchange interLATA and intraLATA telecommunications services within the state of Nebraska, including operator services.

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 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 29th day of November, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel G. Mueller
Deane D. Gay

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

James J. Funder
Chairman

ATTEST:

John Burdette

Deputy Director