

Mailed

Decision 91-10-032 October 23, 1991

OCT 23 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Ameri-Tel Communications, Inc.
for a Certificate of Convenience
and Necessity to Operate as a
Reseller of InterLATA Telecom-
munications Services Within
California.

ORIGINAL

Application 90-09-048
(Filed September 20, 1990)

OPINION

Ameri-Tel Communications, Inc. (Ameri-Tel) seeks a certificate of public convenience and necessity (CPCN) to conduct business as a resale exchange carrier in California. Ameri-Tel proposes to provide resold intrastate "1+" (i.e., interLATA) telecommunications between points within California, and interstate telecommunications service in conjunction therewith. Although Ameri-Tel proposes a statewide originating service area, its initial plans call for marketing its services in metropolitan areas.¹

Ameri-Tel is a corporation organized under the laws of the State of Texas, and is qualified to do business in California. It provides resold telecommunications services using facilities of other interexchange carriers, and has no plans to construct telecommunications network or switching facilities. Instead, it relies solely upon its underlying carrier (in this case U.S. Sprint) to provide network and transmission and switching services.

¹ Ameri-Tel's Application actually requests authority to conduct business as a "resale interexchange carrier operator services provider" (p. 1), but inasmuch as the text of the Application specifically states that Ameri-Tel would not provide operator services, we believe this part of the request is the result of a typographical error, and we will treat it as such.

Its service is offered to business and residential customers served from local exchange company equal access (Feature Group D) end offices, and its customers presubscribe their telephones to Ameri-Tel's designated underlying carrier. Calls are then switched, routed, and terminated over the resold facilities of the underlying carrier.

Because Ameri-Tel provides no switching services to its customers, it is said to provide resold communications on a "switchless" basis. Switchless resellers essentially combine the traffic of many individual users into a tariffed volume discount plan of the underlying carrier. The reseller passes along some of the resultant discount to the end users, who thereby pay lower interLATA rates than those for which they would qualify from the underlying carrier. The reseller retains the other portion of the discount as gross profit. The role of the reseller is therefore merely that of an aggregator of traffic.²

Because consumers benefit from the lower rates they receive through competition from resellers, this Commission has permitted resellers to enter the market with relative ease since the AT&T divestiture. However, after several years of experience the Commission became concerned about the number of resellers who had gone bankrupt, placing substantial revenues of the underlying carriers at risk. Accordingly, in Decision (D.) 90-08-032, 37 PUC 2d 130, the Commission adopted two criteria for granting a CPCN to a nondominant interexchange carrier (NDIEC), including a reseller. First, the Commission requires the applicant to demonstrate that it has a minimum of \$400,000 in uncommitted cash or equivalent

² U.S. Sprint provides Ameri-Tel with magnetic-type call detail information each month, and rating and billing of calls is performed directly by Ameri-Tel or through a billing agent so that the Ameri-Tel bill is included on the customer's local exchange telephone company bill.

financial resources--escalated at a 5% annual rate beginning in 1991--in order to insure that it will be able to meet its initial operating expenses.³ Second, the applicant must make a reasonable showing of technical expertise in telecommunications or a related business.

Currently, under D.90-08-032 an applicant, including a switchless reseller, can only be excused from the requirement of making a showing of \$420,000 from available cash, or the equivalent, under rare circumstances:

"Any applicant who can make a...showing that [\$420,000] in cash is not needed for his proposed first year of operation, in absence of revenues during that period, may be granted a [CPCN] with a lesser amount. A sufficient showing must be made, however, that applicant can meet all demands for wages, rents, wholesale IEC and LEC services, equipment and supplies and any applicable taxes for the first full year of operation...." (37 PUC 2d 148.)

Consequently, a switchless reseller which lacks a current revenue stream may nevertheless obtain a CPCN if its resources are sufficient to meet its anticipated obligations during its first year of operations.

At the request of the ALJ, Ameri-Tel furnished a pro forma income statement for its California operations for its initial 12 months of operation. This income statement is attached as Exhibit A. Although revenue projections are not high, Ameri-Tel anticipates that it will experience no costs (except that of supplies) in the absence of revenues. This is because a switchless

³ The administrative law judge (ALJ) recently elicited comments in (R.) Rulemaking 85-08-042 on whether the Commission should establish a special category of NDIEC to be known as a "Switchless Reseller," and offer that category of NDIEC a lesser financial fitness requirement for certification to enter the interLATA telecommunications markets. ALJ Ruling dated September 6, 1991.

reseller relies for production of revenue almost solely upon the rate differential produced by the aggregation of, and payment for, calls under the underlying carrier's tariff. In other words, cost of sales is negligible because the reseller incurs virtually no costs of its own.

In the instance of Ameri-Tel, the company's overhead consists of a small management team, the lease of office space, the cost of sales personnel, and other normal business expenses such as insurance and office supplies. It is obvious from the pro forma income statement and other materials furnished with the application that much of this overhead expense is being absorbed by its operations in other states, where it is currently operating. Most importantly, its sales personnel are on commission, and their commissions are based upon sales obtained in previous months, after the company actually receives revenue from the sales. Similarly, billing expenses and transmission costs are not payable until revenue-producing calls are actually made, so there will only be a short lag between the accrual of Ameri-Tel's obligations and its receipt of revenues to cover them.

Ameri-Tel furnished a revised balance sheet, current as of December 31, 1991 [sic], at the request of the ALJ. This balance sheet is attached as Exhibit B. It lists cash on hand in excess of \$41,000, plus current receivables of more than \$135,000. Customer billings exceed carrier charges payable by more than \$26,000, which presumably represents some approximation of monthly gross profit. These figures provide a strong indication that Ameri-Tel, as a going concern, is able to meet its ongoing obligations.

Ameri-Tel uses RAM Accounting Services as its cash management agent. Ameri-Tel states that RAM provides cash management services for such corporate clients as Chase Manhattan Bank, CitiBank, and FDIC, and has a fiduciary responsibility to maintain sufficient balances on behalf of its clients to satisfy

all operational long distance service costs. This arrangement provides an added measure of financial security for Ameri-Tel's projected operations in California.

Ameri-Tel intends to utilize credit verification procedures when signing up customers, and reserves the right to deny service to potential customers with unacceptable financial profiles. In the event that a potential customer's financial condition is unknown or marginal, the company may collect an advance payment equivalent to one month's usage. This payment will be applied to the customer's current month's bill.⁴ These measures provide some protection against potential risk to local exchange carriers.

In the event of Ameri-Tel's failure, customers would still be able to complete calls over the underlying carrier and would be billed by that carrier. Customer service would be continuous, and the administrative change in interLATA carriers would be transparent to customers from the standpoint of service.

Under these facts, we find that Ameri-Tel qualifies for exemption from the current available cash requirement for granting a CPCN to an NDIEC. Ameri-Tel's capital needs are minimal, as is its fixed operating expense. If it is authorized to engage in operations as a switchless reseller, consumers will reap the benefit of lower long distance costs, yet will enjoy the transmission quality of the established underlying carrier.⁵

4 Ameri-Tel does not otherwise intend to collect deposits from consumers during the first year of operation, and we have inserted a condition to that effect in the Order.

5 Whether such reseller arrangements are financially deleterious to underlying long distance carriers is the subject of pending comments in R.85-08-042. In the absence of further requirements to protect or compensate those carriers, however, we are not concerned with protection of the underlying carrier's earnings in this proceeding.

There remains for consideration only the question whether Ameri-Tel possesses the requisite technical expertise in telecommunications or a related business to qualify for authority to operate as a reseller. We find that it does. Although Ameri-Tel relies almost wholly upon the expertise of its underlying carrier to provide the actual telecommunications service, its chief executive officer, president, and vice presidents have substantial experience in business, including financial planning and marketing. One of its vice presidents has served as a major account executive for US Sprint and MCI. As further evidence of its technical competence, Ameri-Tel filed its proposed tariff with its Application. Finally, Ameri-Tel is assisted by two consultants who have extensive experience in the telecommunications industry. Consequently, Ameri-Tel satisfies the Commission's technical expertise criterion for entry.

In light of the foregoing, Ameri-Tel's application is approved.

Findings of Fact

1. A copy of the Application herein has been served upon each interexchange carrier offering "1+" service to business and residential customers in California, which are all of Ameri-Tel's potential competitors.
2. Notice of filing of the Application was duly published in the Commission's Daily Calendar.
3. Ameri-Tel has sufficient financial resources to meet all demands for wages, rents, wholesale interexchange carrier and local exchange carrier services, equipment and supplies, and any applicable taxes for the first year of operation of the telecommunication service for which it requests a CPCN herein.
4. Ameri-Tel has sufficient technical expertise in telecommunications and in the marketing of telecommunications service to perform the service for which it requests a CPCN herein.

Conclusions of Law

1. The Application should be granted to the extent set forth in the Order herein.

2. Because of the public interest in competitive interLATA service, the Order herein should be made effective immediately.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Ameri-Tel Communications, Inc. (Ameri-Tel) to operate as a reseller of the interLATA telecommunications service offered by communications common carriers in California, subject to the following conditions:

- a. Ameri-Tel shall offer and provide its services only on an interLATA basis;
- b. Ameri-Tel shall not provide intraLATA services;
- c. Ameri-Tel shall not hold out to the public that it has authority to provide, or that it does provide, intraLATA services; and
- d. Ameri-Tel shall advise its subscribers that they should place their intraLATA calls over the facilities of the local exchange company.

2. To the extent that Ameri-Tel requests authority to provide intraLATA telecommunication service, it is denied.

3. Within 30 days after this order is effective, Ameri-Tel shall file a written acceptance of the certificate granted in this proceeding.

4. a. Ameri-Tel is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Ameri-Tel may not offer service until tariffs are on file. If Ameri-Tel has an effective

Federal Communications Commission (FCC)-approved tariff, it may need to file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service. If Ameri-Tel has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Ameri-Tel's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

b. Ameri-Tel is a nondominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as follows:

"5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- "a. Inclusion of FCC-approved rates in California Public Utilities [Commission] tariff schedules shall become effective on one (1) day's notice,
- "b. Uniform rate reductions for existing services shall become effective on five (5) days' notice,
- "c. Uniform rate increases for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts or first class mail notice to customers of the pending increased rates, and
- "d. Advice letter filings for new services and for all other types of tariff revisions shall become effective on forty (40) days' notice."

5. Ameri-Tel may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which Ameri-Tel is subject.

6. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived to the extent that changes in FCC tariffs may become effective on the same date for California interLATA service for those companies that adopt the FCC tariffs.

7. Ameri-Tel shall file as part of its individual tariff, after the effective date of this order and consistent with Ordering Paragraph 4, a service area map.

8. Ameri-Tel shall not collect any deposit from its customers for a period of one year from the date its service is first rendered to the public, except that Ameri-Tel, at its discretion, may collect an advance payment equivalent to one-month's usage, when a potential customer's financial conditions is unknown or marginal, which initial payment shall be applied to the following month's bill for that customer.

9. Ameri-Tel shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

10. Ameri-Tel shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire

if not exercised within 12 months after the effective date of this order.

12. Ameri-Tel shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

13. The corporate identification number assigned to Ameri-Tel is U-5244-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

14. Within 60 days of the effective date of this order, Ameri-Tel shall comply with Public Utilities Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

15. Ameri-Tel is exempted from the provisions of Public Utilities Code §§ 816-830.

16. The application is granted, as set forth above.

17. This decision closes this proceeding.

This order is effective today.

Dated October 23, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

JOHN B. OHANIAN

DANIEL Wm. FESSLER

NORMAN D. SHUMWAY

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

NEAL J. SHULMAN, Executive Director

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call
(415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)

EXHIBIT A

AMERI-TEL COMMUNICATIONS INC.
 PROFORMA INCOME STATEMENT
 CALIFORNIA OPERATIONS

| | AUG 91 | SEPT 91 | OCT 91 | NOV 91 | DEC 91 | JAN 92 | FEB 92 | MAR 92 | APR 92 | MAY 92 | JUN 92 | JUL 92 |
|-------------------|---------|---------|---------|---------|---------|---------|----------|----------|----------|----------|----------|----------|
| Revenues | \$2,000 | \$3,000 | \$4,000 | \$5,000 | \$6,000 | \$8,000 | \$10,000 | \$12,000 | \$14,000 | \$16,000 | \$18,000 | \$20,000 |
| Carrier Costs | \$1,300 | \$1,950 | \$2,600 | \$3,250 | \$3,900 | \$5,200 | \$6,500 | \$7,800 | \$9,100 | \$10,400 | \$11,700 | \$13,000 |
| Salaries | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Commissions | \$200 | \$300 | \$400 | \$500 | \$600 | \$800 | \$1,000 | \$1,200 | \$1,400 | \$1,600 | \$1,800 | \$2,000 |
| Billing Costs | \$260 | \$390 | \$520 | \$650 | \$780 | \$1,120 | \$1,300 | \$1,560 | \$1,820 | \$2,080 | \$2,340 | \$2,600 |
| Rent & Equipment | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Supplies | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 | \$200 |
| Insurance & Taxes | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Profit | \$40 | \$160 | \$280 | \$400 | \$520 | \$680 | \$1,000 | \$1,240 | \$1,480 | \$1,720 | \$1,960 | \$2,200 |

Note: Above figures are for revenue and costs associated with California operations.

Note: In absence of revenues, all costs (except supplies) are also eliminated.

(END OF EXHIBIT A)

EXHIBIT B

Page 1

Ameri-Tel Communications, Inc.
Application No. 90-09-048

AMERI-TEL COMMUNICATIONS, INC.
BALANCE SHEET
DECEMBER 31, 1991
Page 1 of 2

ASSETS

Current Assets

| | | |
|------------------------------|-------------|------------|
| Cash - Republic Bank | 41,043.98 | |
| Interstate Bank | (37,799.79) | |
| Nominee Cash Account | 380.39 | |
| Accts. Receivable - employee | 5,530.00 | |
| Accts. Receivable - billings | 108,319.81 | |
| Accts. Receivable - other | 21,500.00 | |
| Transfer to HOA | 29,722.20 | |
| Total Current Assets | | 168,696.59 |

Fixed Assets

| | | |
|--------------------|-----------|-----------|
| Computer Equipment | 6,590.86 | |
| Other Assets | 200.00 | |
| Motor Vehicles | 17,500.00 | |
| Customer Lists | 48,000.00 | |
| Total Fixed Assets | | 72,290.86 |

| | | |
|--------------|--|-----------|
| Other Assets | | 21,009.45 |
|--------------|--|-----------|

| | | |
|--------------|--|------------|
| TOTAL ASSETS | | 261,996.90 |
|--------------|--|------------|

EXHIBIT B

Page 2

Ameri-Tel Communications, Inc.

Application No. 90-09-048

AMERI-TEL COMMUNICATIONS, INC.

BALANCE SHEET

DECEMBER 31, 1991

Page 2 of 2

LIABILITIES AND EQUITY

Current Liabilities

| | | |
|---------------------------|------------|------------|
| FICA Payable | 22,148.16 | |
| Federal W/H Payable | 14,303.36 | |
| State W/H Payable | 6,033.77 | |
| Accruals | 2,514.69 | |
| Accounts Payable | 5,000.00 | |
| Carrier Charges Payable | 82,551.11 | |
| Phone Billing Payable | 10,474.13 | |
| Commissions Payable | (1,123.38) | |
| Sponsorships Payable | (8,147.62) | |
| Total Current Liabilities | | 145,708.79 |

Long Term Liabilities

| | | |
|-----------------------------|-----------|-----------|
| Note Payable - ITT | 2,836.26 | |
| Note Payable - GMAC | 13,180.36 | |
| Note Payable - C. Hogue | 11,000.00 | |
| Note Payable - Birdsong | 12,000.00 | |
| Note Payable - T. Freeny | 17,000.00 | |
| Total Long Term Liabilities | | 56,016.62 |

Stockholder Equity

| | | |
|------------------------------|--------------|------------|
| Capital Stock | 238.00 | |
| Paid-in Capital | 216,012.00 | |
| Current Income (Loss) | (155,978.51) | |
| Total Stockholder Equity | | 60,271.49 |
| TOTAL LIABILITIES AND EQUITY | | 261,996.90 |

(END OF EXHIBIT B)