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Decision 92-09-006 September 2, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of  
Amerifax, Inc., seeking authority  
for the resale of intrastate  
telecommunications service.

)  
) Application 91-05-043  
) (Filed May 20, 1991)  
)

O P I N I O N

Request

Amerifax, Inc. (applicant), a Delaware corporation qualified to do business in California, doing business as AFAX, requests a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to provide intrastate interLATA telephone services within California.<sup>1</sup> In addition to its application, applicant filed an amended application on July 8, 1991, and three clarification letters. The clarification letters dated September 26, 1991, March 11, 1992, and May 14, 1992 have been incorporated into the record.

Background

In Decision (D.) 90-08-032, 37 CPUC 2d 130, as modified by D.91-10-041, the Commission established two major criteria for determining whether a CPCN should be granted. An applicant, such as Amerifax, Inc., who does not own, control, operate, or manage telephone lines (switchless reseller) must demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources. For applications filed after 1991 this minimum cash

<sup>1</sup> California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

requirement increases 5% per year. In addition, an applicant is required to make a reasonable showing of technical expertise in the telecommunications or related business.

Financial Resources

With respect to the requirement that applicant demonstrate that it has a minimum of \$75,000 in uncommitted cash or equivalent financial resources, applicant substantiated in its March 11, 1992 clarification letter that it possesses a sufficient amount of unencumbered cash or cash equivalent to meet the financial requirement. As shown in applicant's March 11, 1992 clarification letter, applicant has certified that at least \$75,000 of the \$125,000 funds available to it pursuant to a loan agreement between applicant and MidAmerican Bank and Trust Company shall be reserved for use in the provision of intraLATA resale services in California.

Technical Expertise

Applicant addressed in its September 26, 1991 clarification letter the business biographies of its two key management personnel, chief executive officer Gordon Hutchins (Hutchins) and sales director Jonnie R. Craig (Craig).

Hutchins has more than 20 years of telecommunications experience in a wide variety of technical and managerial positions, including president and chief executive officer of ICC Telecommunications and LDX Net. Craig's telecommunications experience consists of approximately 2 years as a regional sales manager for MidAmerican Communications Corporation prior to obtaining the present sales director position with applicant. As applicant's sales director, Craig is responsible for directing sales representatives and sales agents on a national level.

In addition, applicant attached a draft of its initial California tariff schedule, Appendix C to its application, to substantiate that it has the technical expertise to provide resale services within California.

Applicant possesses the necessary technical expertise to operate as a non-dominant telecommunications carrier. We will authorize the interLATA services that applicant seeks to provide; but to the extent that the application seeks authority to provide intraLATA service, we will deny it.

Findings of Fact

1. Applicant served a copy of the application upon the 152 telephone entities with which applicant stated it is likely to compete.
2. A notice of the filing of the application appeared in the Daily Calendar of May 23, 1991.
3. An amended application was filed on July 8, 1991.
4. No protests have been received.
5. A hearing is not required.
6. On June 29, 1983, the Commission issued Order Instituting Investigation (OII) 83-06-01 to determine whether competition should be allowed in the provision of telecommunication transmission service within the state. Many applications to provide competitive service were consolidated with OII 83-06-01.
7. By interim D.84-01-037, and later decisions, we granted those applications, authorizing interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold themselves out to the public to provide intraLATA service, pending our final decision in OII 83-06-01.
8. By D.84-06-113 we denied the applications to the extent that they sought authority to provide competitive intraLATA telecommunications service. We also directed those persons or corporations not authorized to provide intraLATA telecommunication service to refrain from holding out the availability of such service; and we required them to advise their subscribers that intraLATA calls should be placed over the facilities of the local exchange company.

9. There is no basis for treating this application differently than those filed earlier.

10. Applicant has a minimum \$75,000 in uncommitted cash or equivalent financial resources, as required by D.90-08-032, as modified by D.91-10-041.

11. Applicant has made a reasonable showing of technical expertise in telecommunications, as required by D.90-08-032, 37 CPUC 2d 130, 147-148, 156, 158.

12. Applicant is technically and financially able to provide the proposed services.

13. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

14. Exemption from the provisions of PU Code § 816-830 has been granted to other resellers.

15. Public convenience and necessity require the service to be offered by applicant.

#### Conclusions of Law

1. Applicant should be treated no differently than other non-dominant interLATA carriers which have requested and received a CPCN to provide interLATA telecommunications service in California.

2. Applicant is subject to:

- a. The current 4.0% surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll (PU Code § 879; Resolution T-14960) to fund the Universal Lifeline Telephone Service (ULTS);
- b. The current 0.3% surcharge on gross intrastate interLATA revenues to fund Telecommunications Devices for the Deaf (PU Code § 2881; Resolution T-13061); and
- c. The user fee provided in PU Code §§ 431-435, which is 0.1% of gross intrastate revenue for the 1991-92 fiscal year (Resolution M-4760).

3. The application should be granted to the extent set forth below.

4. Because of the public interest in competitive interLATA service, the following order should be effective immediately.

5. Applicant should be required to pay the appropriate fees on intrastate, interLATA telecommunications services provided prior to the receipt of a CPCN.

The State may grant any number of operative rights and may cancel or modify the monopoly feature of those rights at any time.

O R D E R

**IT IS ORDERED that:**

1. A certificate of public convenience and necessity is granted to Amerifax, Inc. (applicant) to provide intrastate interLATA telecommunications service in California, subject to the following conditions:

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

2. To the extent that applicant requests authority to provide intraLATA telecommunications service, it is denied.

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

4. a. Applicant is authorized to file with this Commission, 5 days after the effective date of this order, tariff schedules for the provision of interLATA service. Applicant may not offer service until tariffs are on file. Applicant'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. Applicant is a non-dominant 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 modified by D.91-12-013 and D.92-06-034, 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 for interstate services in California public utilities 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, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- "d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than 5 working days' notice. Customer notice is not required for such minor rate increases.
- "e. Advice letter filings for new services and for all other types of tariff

revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

"f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

5. Applicant 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 those 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 applicant is subject, as reflected in Conclusion of Law 2.

6. Applicant 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.

7. Applicant shall notify this Commission in writing of the date service is first rendered to the public within 5 days after service begins.

8. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC rules.

9. Applicant 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.

10. 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.

11. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from today.

12. The corporate identification number assigned to applicant is U-5283-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.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

14. Applicant is exempted from the provision of PU Code §§ 816-830.

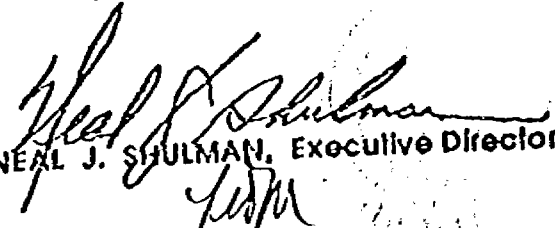
15. The application is granted, as set forth above.  
This order is effective today.

Dated September 2, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
NORMAN D. SHUMWAY  
Commissioners

Commissioner Patricia M. Eckert,  
being necessarily absent, did  
not participate.

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 questions 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 at:
  - 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)