

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Cancellation)
of the Certificate of Service)
Authority and Accompanying) Case No. TD-2003-0582
Tariff of ConnectAmerica, Inc.)

PREHEARING CONFERENCE
Volume 1
Monday, January 5, 2004
Governor Office Building
200 Madison Street
Jefferson City, Missouri 65101

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE

REPORTED BY:
Patricia A. Stewart
RMR, RPR, CCR, CSR
ASSOCIATED COURT REPORTERS
714 West High Street
Jefferson City, Missouri 65101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

ROBERT S. BERLIN, Assistant General Counsel
PUBLIC SERVICE COMMISSION
P. O. Box 360
Jefferson City, Missouri 65102

FOR: Staff of the Missouri Public Service
Commission.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE RUTH: Good morning.

We are here for a prehearing conference in Case No. TD-2003-0582, in the matter of the cancellation of the certificate of service authority and accompanying tariff of ConnectAmerica, Incorporated.

My name is Vicky Ruth, and I'm the regulatory law judge assigned to this case.

Today's date is January 5th, 2004, and it is a few minutes after 10:00 a.m.

Okay. I'd like to begin by taking entries of appearance.

And I will note that although Staff is present, ConnectAmerica is not present. In fact, counsel for ConnectAmerica, William D. Steinmeier, left me a voice-mail message on Friday, January 2nd, and the voice-mail message simply indicated that Mr. Steinmeier had not been authorized by his client to attend today's prehearing conference, and he would, therefore, not be present today.

The message did not request any kind of extension. It was just simply a heads-up that he would not be here.

So, Staff, would you please make your entry of appearance.

1 MR. BERLIN: Yes, Your Honor.

2 Robert S. Berlin, attorney for Staff of the
3 Missouri Public Service Commission, Post Office Box 360,
4 Jefferson City, Missouri, 65102.

5 JUDGE RUTH: Thank you.

6 And I'll note for the record that Public
7 Counsel is not present and so far has not been
8 participating in this case.

9 This prehearing conference was originally
10 scheduled to give the parties an opportunity to further
11 discuss, define and possibly resolve the issues present
12 in this case, or at least agree on a procedural schedule.

13 Staff had several months ago filed a
14 petition -- or request to cancel the company's
15 certificate. Then ConnectAmerica had filed several
16 requests for extensions of time to become compliant with
17 Commission and Secretary of State rules.

18 However, the company did not meet the
19 Commission's last deadline to file the compliant papers,
20 and, therefore, this hearing was scheduled -- prehearing
21 conference -- excuse me -- was scheduled.

22 As ConnectAmerica has not appeared, I do not
23 have any questions that we will go through. Instead,
24 I'll mention that unless otherwise ordered by a
25 Commission order, the previous deadline for procedural

1 schedule of January 12th will still hold.

2 Staff, do you have any matters that need to be
3 discussed at this time or is there a statement you wish
4 to make on the record?

5 MR. BERLIN: Yes, Your Honor, there is a
6 statement I wish to make with regard to this prehearing
7 conference.

8 If I may, I would like to start with at least a
9 procedural background of this particular case with
10 ConnectAmerica, Incorporated.

11 On June 30th, 2003 Staff filed a motion to open
12 case and cancel certificate of service authority and
13 accompanying tariff on ConnectAmerica, Incorporated.

14 Upon receipt of service, company counsel called
15 me and said they needed time to investigate the matter.
16 That phone call was on July 2nd.

17 On July 7th, 2003 Staff filed an amended motion
18 to open case and cancel certificate of service authority
19 and accompanying tariff, and on July 11th Staff amended
20 the amended motion of filing its amended motion to open
21 case and cancel certificate, along with a motion to
22 withdraw the July 7th amended motion, in order to make
23 our filing correct.

24 On July 17th the Commission issued its first
25 order directing filing, requiring that ConnectAmerica,

1 Incorporated, not later than September 2nd, would file
2 with the Commission a certificate of good standing or
3 evidence of good standing from the Missouri Secretary of
4 State's Office.

5 Two months elapsed, and on September 17th the
6 Commission issued its second order directing filing,
7 directing that ConnectAmerica, Incorporated file a
8 pleading showing good cause as to why they missed the
9 deadline for filing their certificate of good standing or
10 evidence there of two months prior, which was required
11 under the Commission's first order directing filing of
12 July 17th.

13 The second order directing filing gave
14 ConnectAmerica, Incorporated until September 29th to
15 make -- to file its show-cause pleading with regard to
16 its status.

17 On September 29th the company's Missouri
18 counsel, William Steinmeier, filed a motion for extension
19 of time, and on October 15th the Commission issued an
20 order granting an extension of time to ConnectAmerica,
21 which extended the deadline to file ConnectAmerica's
22 certificate of good standing or other evidence from the
23 Missouri Secretary of State's Office.

24 That deadline was extended by the Commission
25 from September 29th of 2003 until November 13th, 2003.

1 And on December 10th the Commission issued an
2 order scheduling prehearing conference, of which we are
3 here today, requesting the filing of a procedural
4 schedule.

5 I would like to note that on January 2nd, 2004
6 William Steinmeier, company's Missouri counsel, called me
7 and informed me that he was not authorized to attend
8 today's prehearing conference and that his company -- or
9 his client, through its New Orleans counsel, denied him
10 the authority to attend today's prehearing conference.

11 I checked with the Missouri Secretary of
12 State's Office today by phone and by Internet and
13 confirmed that ConnectAmerica, Incorporated remains in
14 dissolved status.

15 I would like to read to you Missouri
16 Statute 351.486, Subsection 3, which states, and I quote,
17 a corporation administratively dissolved continues its
18 corporate existence but may not carry on any business
19 except that necessary to wind up and liquidate its
20 business and affairs under Section 351.476 and notify
21 claimants under Sections 351.478 and 351.482, and any
22 officer or director who conducts business on behalf of a
23 corporation so dissolved, except as provided in this
24 section, shall be personally liable for any obligations
25 so incurred.

1 And that is the statute that Staff has found
2 ConnectAmerica, Incorporated in violation of, in that it
3 remains under dissolved status and may not conduct
4 business in the State of Missouri.

5 Staff would move that the Commission issue an
6 order approving Staff's request in its July 7th, 2003
7 amended motion.

8 And I'm reading from the July 7th pleading,
9 that, quote, if ConnectAmerica fails to make this filing,
10 the Staff recommends that the Commission issue an order,
11 one, cancelling ConnectAmerica's certificate and PSC
12 Missouri No. 1 tariff 30 days after that order's
13 issuance; two, directing ConnectAmerica to notify its
14 Missouri customers in writing within 15 days after that
15 order's issuance of the need to select another carrier
16 within 30 days after that order's issuance, and, three,
17 directing ConnectAmerica to file a pleading, with a copy
18 of the required customer notice attached, unquote.

19 As I indicated, that was from our July 11th,
20 2003 amended motion.

21 At this point Staff doesn't see a need for any
22 more prehearing conferences, especially given that the
23 company remains dissolved and hasn't authorized its
24 Missouri counsel to even attend this conference.

25 We don't know what's left to do in this case.

1 JUDGE RUTH: Staff, can you on the record
2 explain for the benefit of the commissioners why a
3 hearing -- why Staff believes a hearing is not necessary
4 in order to cancel the company's certificate, since in
5 this case the company has indicated they object to the
6 cancellation of the certificate.

7 MR. BERLIN: Well, Your Honor, the company has
8 also indicated that it would submit to the Commission a
9 copy of a certificate of good standing or evidence of
10 good standing with the Secretary of State's Office, but
11 it has not done so.

12 JUDGE RUTH: Is the certificate a property
13 right, though, or are you arguing it's not a property
14 right?

15 I just -- Staff has simply indicated that the
16 Commission has the authority to cancel the certificate
17 without a hearing. The Commission would appreciate it if
18 Staff would explain upon what authority Staff is relying
19 that would indicate that the Commission does not need to
20 have a hearing in a case such as this where the company
21 objects to the cancellation.

22 Sometimes the Commission cancels certificates
23 without a hearing, but that is generally done where the
24 party -- the company has failed to respond in any way,
25 and, therefore, there is no indication that the company

1 objects to the cancellation.

2 Here the company has objected to the
3 cancellation.

4 Can you clarify, then, why a hearing is not
5 necessary in this case?

6 MR. BERLIN: I believe so, Your Honor.

7 The Commission need not hold a hearing if,
8 after proper notice, an opportunity to intervene, no
9 party requests such a hearing.

10 And that I cite State ex rel Rex
11 Deffenderfer Enterprises, Inc. v. Public Service
12 Commission 776 S.W. 2nd 494, Missouri Appellate 1989.

13 That case law allows the Commission to not hold
14 a hearing.

15 And I would like to emphasize that the company
16 has had more than adequate notice.

17 And, in fact, the Missouri-appointed counsel
18 for the company had made plans to attend this prehearing
19 conference but was denied authority by his client.

20 I don't know what additional notice needs to be
21 made to the company, because I believe that they have
22 full notice.

23 And, in fact, based on my conversations with
24 company's counsel in New Orleans of several months ago,
25 that they had indeed intended to bring themselves back

1 into good standing with the Secretary of State's Office
2 as is required by the statute that I cited, and other
3 related statutes, for them to be able to conduct business
4 in the State of Missouri.

5 I verified with the Secretary of State's Office
6 today that the company remained administratively
7 dissolved as of 9:50 a.m. this morning, and their
8 records; that is, the Secretary of State's Office
9 records, showed that the company had requested a package
10 in order to bring themselves back into good standing but
11 had done nothing else in furtherance thereof, according
12 to the Secretary of State's Office's records as of
13 9:50 a.m. this morning.

14 So Staff believes that we have, as well as the
15 Commission, through its very liberal granting of a motion
16 for extension of time and other orders directing them to
17 respond, that we have done everything that we can do to
18 encourage them, if they want to do business in this
19 state, to bring themselves back into compliance with
20 Missouri statute and to become, again, in good standing
21 with the Secretary of State's Office.

22 As I mentioned, they remain dissolved. And the
23 statute is very clear: They are not entitled to conduct
24 business in the State of Missouri other than those
25 activities related to winding down their business

1 affairs.

2 JUDGE RUTH: Do you happen to know how many
3 customers ConnectAmerica has in Missouri?

4 MR. BERLIN: No, Your Honor, I'm not aware of
5 the exact number.

6 I believe they have some customers, which is
7 why Staff made the original pleading directing
8 ConnectAmerica to notify its Missouri customers in
9 writing with the proper notice, so that the customers
10 would have proper notice to change carriers, and also
11 directing that ConnectAmerica file a pleading, with a
12 copy of the required customer notice, with the
13 Commission.

14 JUDGE RUTH: I understand.

15 I just wondered if you had an idea of how many
16 customers they have. If you don't, that's fine.

17 Okay.

18 Anything else you want to add for the record,
19 Mr. Berlin?

20 MR. BERLIN: No, Your Honor. The record is
21 fairly clear here.

22 I would advise -- or perhaps suggest that Staff
23 could submit a motion for summary disposition of this
24 case if the Commission felt it necessary.

25 JUDGE RUTH: That's up to you.

1 I think there is enough information for me to
2 discuss this with the commissioners.

3 Unfortunately, I did not bring a calendar with
4 me.

5 Do you happen to have one?

6 The reason I ask, is there is not an agenda on
7 Thursday the 8th, which means, I don't think there is an
8 agenda before, that I could take this matter to them
9 before the 12th.

10 MR. BERLIN: Okay.

11 JUDGE RUTH: So regardless of what the
12 Commission ends up doing, I'm going to go ahead and
13 extend that deadline of the 12th for one week, which
14 would make it the 19th, and that just gives the
15 commissioners an opportunity to discuss this matter in
16 agenda before Staff would have to file a proposed
17 procedural schedule.

18 So the December 12th -- I'm sorry. I said
19 December. I meant January.

20 The January 12th deadline for the proposed
21 procedural schedule will be extended.

22 Is the 19th -- actually, I believe the 19th is
23 a holiday. So we'll make it Tuesday the 20th,
24 January 20th.

25 And we'll see what the commissioners choose to

1 do during their discussion.

2 And if anything further is needed from Staff,
3 I'll issue an order requesting that information.

4 MR. BERLIN: Okay. Thank you, Your Honor.

5 JUDGE RUTH: Then we will conclude the on-the-
6 record prehearing conference.

7 We'll go off.

8 WHEREUPON, the on-the-record portion of the
9 prehearing conference was concluded.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25