

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the application of)	Application No. C-460
AT&T Communications of the Midwest,)	
Omaha, Nebraska, for authority to)	GRANTED IN PART
provide communications services in)	
the State of Nebraska.)	Entered: December 27, 1983

APPEARANCES:

For the Applicant
 Richard A. Peterson
 P.O. Box 81849
 Lincoln, Nebraska 68501
 and
 W. Richard Morris
 AT&T Communications
 10825 Old Mill Road
 Omaha, Nebraska 68154

For the Protestant, The Lincoln Telephone
 and Telegraph Company
 Paul M. Schudel
 1500 American Charter Center
 Lincoln, Nebraska 68508

For Protestant, Northwestern Bell Telephone
 Company
 Richard L. Johnson
 100 South 19th Street
 Omaha, Nebraska 68102

For Protestants, The Hamilton Telephone Company
 and Consolidated Telephone Company
 Larry Carstenson
 P.O. Box 167
 Aurora, Nebraska 68818

For Intervenor, Great Plains Communications, Inc.
 Wyman E. Nelson
 1645 Front Street
 Blair, Nebraska 68008

BY THE COMMISSION:

By its application filed October 27, 1983, AT&T Communications of the Midwest, Inc., Omaha, Nebraska, seeks authority to provide telecommunications services within the State of Nebraska.

Notice of this application was published in the Daily Record, Omaha, Nebraska, on November 1, 1983, pursuant to the Rules and Regulations of this Commission pertaining to notice. On November 1, 1983, the Commission sent a letter of notification to all interested parties advising that the application had been filed and the extent of authorization sought by the Applicant. Protests to the granting of this application were filed by the four protestants

noted above and one party intervened in the matter. On December 5, 1983, the Secretary of the Commission sent a letter by first class mail to all parties interested in this proceeding giving them notice of the hearing in this matter.

Pursuant to the aforementioned notices, hearing was held on this application on December 16, 1983 in the Commission Hearing Room, 301 Centennial Mall South, Lincoln, Nebraska, with appearances as shown above. The applicant and all other parties to this matter presented evidence to the Commission and members of the public were given the opportunity to testify.

OPINION AND FINDINGS

1. The applicant is an Iowa corporation authorized to do business in the State of Nebraska with its principal executive offices located in Omaha, Nebraska. Applicant is currently a wholly-owned subsidiary of Northwestern Bell Telephone Company, however, it will become a wholly-owned subsidiary of AT&T subsequent to January 1, 1984 in accordance with the requirements of the Modification of Final Judgment ("MFJ") entered in United States vs. American Telephone & Telegraph Co., 522 F.Supp. 131 (D.D.C. 1982), aff'd sub nom, Maryland vs. United States, 103 S.Ct. 1240 (1983) and the Plan of Reorganization ("POR") submitted thereunder, approved and entered by the United States District Court on August 5, 1983.

2. The protestants and the intervenor are currently certificated common carriers authorized to provide telecommunications services in their respective service areas within the State of Nebraska and are subject to the jurisdiction of this Commission in providing these services.

3. Each of the protestants and the intervenor have stated in their respective protests and petitions to intervene, as well as in testimony offered at the hearing, that each does not oppose the application insofar as applicant seeks authority to provide only those specific services in the State of Nebraska which are now provided by virtue of facilities owned by Northwestern Bell Telephone Company and which are required to be provided by applicant effective January 1, 1984 under the MFJ and POR. Protestants and intervenor opposed approval of any authority for applicant beyond that required to comply with the MFJ and POR.

4. All parties to this matter were in agreement that the Commission's consideration of the application should proceed under Section 75-604 of the Nebraska Revised Statutes, as amended. The text that statutes states:

No person, firm, partnership, corporation, cooperative, or association shall offer telephone service or shall construct a new telephone line in or extend an existing telephone line into the territory of another telephone company without first making an application for and receiving from the Commission a certificate of of convenience and necessity, after due notice and hearing under the rules and regulations of the Commission. Before granting a certificate of convenience and necessity, the Commission must find that (1) the territory in which the applicant proposes to offer telephone service is not receiving reasonably adequate telephone service from the telephone company already

serving the territory, or (3) the application is agreeable to the subscriber or subscribers and to both telephone companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party of parties requiring telephone service.

5. Patrick H. McHale testified on behalf of applicant to the effect that in his opinion this Commission should authorize competition in all levels of telecommunications services in Nebraska including intrastate interLATA toll service, intrastate intraLATA toll service and local exchange service. Applicant also offered the testimony of Dean Steinmeyer to describe the financial characteristics of applicant and the testimony of G. A. Christiansen to describe tariffs which had been developed by applicant.

6. Applicant offered no evidence to support a finding by this Commission that the telecommunications services provided by the protestants and intervenors in the State of Nebraska were not reasonably adequate or that such services would not within a reasonable time be reasonably adequate. Protestants, The Lincoln Telephone & Telegraph Company, the Hamilton Telephone Company and Consolidated Telephone Company each offered evidence that the level of service offered by them met or exceeded all Commission service standards and technologically was the state of the art, and this Commission finds that such telecommunications services are reasonably adequate.

7. Based upon the evidence offered by Applicant, it is clear that effective January 1, 1984, the only facilities which applicant will have in place to provide telecommunications services in Nebraska will be those for providing intrastate interLATA service. It is further clear that telephone companies currently certificated by this Commission now have in place facilities to provide telecommunications services to the public. Therefore, construction of additional facilities would be necessary in the event that Applicant were granted authorization to provide the state-wide telecommunications services for which it seeks authorization, and this Commission finds that such construction would create a duplication of facilities.

8. Protestants, The Lincoln Telephone and Telegraph Company, The Hamilton Telephone Company and Consolidated Telephone Company and intervenor, Great Plains Communications, Inc. each offered evidence establishing that in the event that the application were granted in its entirety, such protestants' ability to continue to perform public communications services provided under existing authority issued by this Commission would be impaired and that traffic and revenue would be diverted from such existing certificated carriers. This Commission finds that such impairment and diversion is contrary to and inconsistent with the legislative policy of the State of Nebraska as expressed in Section 75-604, which is designed to foster sound economic conditions and to avoid destructive competition, and therefore this Commission finds that granting this application in its entirety would not be in the public interest.

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9. This Commission is mindful of the changes in the telecommunications industry as a whole necessitated by the MFJ and POR and finds that after January 1, 1984 Northwestern Bell Telephone Company will be precluded by the MFJ from providing intrastate interLATA telecommunications services, that in the event that authorization to provide such intrastate interLATA services is not granted to applicant that no reasonably adequate telephone service of that specific type would be available, nor would it in a reasonable time be available and that granting applicant authorization to provide intrastate interLATA telecommunications services consistent with the requirements of the MFJ and POR is in the public interest.

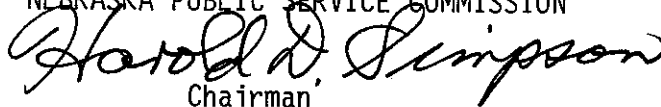
ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-460 be and it is hereby granted in part, namely, that AT&T Communications of the Midwest, Inc. be and it is hereby authorized to offer and provide in the State of Nebraska those specific services which are now provided by virtue of facilities owned by Northwestern Bell Telephone Company and which are required to be provided by said applicant effective January 1, 1984 by the terms of the Modification of Final Judgment rendered in United States vs. American Telephone and Telegraph Company, 522 F.Supp. 131 (D.D.C. 1982), aff'd sub nom, Maryland vs. United States, 103 S.Ct. 1240 (1983), and the plan of Reorganization submitted thereunder and approved by the District Court on August 5, 1983.

IT IS FURTHER ORDERED that Application No. C-460 be and it is hereby denied insofar as it seeks authorization to provide telecommunications services in the State of Nebraska other than those services specifically authorized in the preceding paragraph of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of December, 1983.

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

COMMISSIONERS CONCURRING:

ATTEST:


Executive Secretary