

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the application of) Application No. C-573
U.S. Telephone, Inc., Dallas, Texas)
seeking permission, approval, and a)
Certificate of Public Convenience and)
Necessity authorizing it to operate as) GRANTED AS AMENDED
an interexchange carrier of telecommun-)
ication services within the state of)
Nebraska.) Entered: December 10, 1985

APPEARANCES: For the Applicant, U.S. Telephone, Inc.
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Dallas, Texas
and
Donald H. Erickson, Attorney
10330 Regency Parkway Drive
Omaha, Nebraska

For the Protestant, AT&T
Mark E. Belmont, Attorney
10825 Old Mill Road
Omaha, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By its application filed February 22, 1985, U.S. Telephone, Inc., Dallas, Texas, seeks a Certificate of Public Convenience and Necessity authorizing it to provide telephone service in the state of Nebraska.

Notice of the filing of the application was published on February 27, 1985, pursuant to the provisions of the Commission's Rules and Regulations.

On June 18, 1985, applicant amended its application to seek authority to provide intrastate interLATA long distance service only.

Protests to the granting of the application were filed by the Lincoln Telephone and Telegraph Company, AT&T, and General Telephone of the Midwest. When the application was amended, the protest of Lincoln Telephone and Telegraph Company was withdrawn.

Pursuant to notice required by law, public hearing was held on the amended application on October 30, 1985, in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown.

Upon consideration of the amended application, the evidence presented at the hearing, and being fully advised, the Commission is of the opinion and finds that:

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1. Applicant, U.S. Telephone, Inc., is a Texas corporation duly organized and existing under the laws of the state of Texas. It is a subsidiary of United Telecommunications, Inc., which has headquarters in Kansas City, Missouri. Applicant is a long distance carrier offering long distance service from a number of metropolitan areas to all points within the contiguous United States, Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

2. The application, as amended, seeks the issuance of a Certificate of Public Convenience and Necessity to provide intrastate interLATA long distance service, and the approval of tariffs and relaxed regulation as a non-dominant carrier.

3. The state of Nebraska has been divided into three Local Access and Transport Areas (LATA's) pursuant to the terms of the Modified Final Judgement (MFJ) entered in United States v. American Telephone & Telegraph Company, 552 F. Supp. 131 D.C.C. (1982), aff'd sub nom. California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph, 569 F. Supp. 990 D.C.C. (1983), aff'd sub nom. California v. United States, 104 S. Ct. 542 (1983). Under the terms of the MFJ, AT&T Communications is allowed to provide Telecommunications services between LATA's, while the Bell Operating Companies such as Northwestern Bell are restricted to providing services only within such LATA's.

4. Another result of the MFJ was that the Division of Revenue procedure for toll revenues was rendered obsolete. In its place a system of Access Charges has been established.

5. Four witnesses were called by the applicant to testify regarding the application. Witnesses described the interstate service presently provided in Nebraska and the proposed services. Originating service is presently available from the Omaha metropolitan area with terminating service throughout the state. (T-33). Using the travel card service, calls may be originated from any point in Nebraska. (T-26).

The Commission is governed by the provisions of Section 75-604, Revised Statutes of Neb. in the granting of Certificates of Public Convenience and Necessity.

6. 75-604. Telephone lines; construction; extension into territory served by another telephone company; certificate of convenience and necessity; application; notice; hearing; findings required. 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 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, (2) that the portion of the territory of another telephone company in which or into which the applicant proposes to construct new lines or extend its existing lines is not and will not within a reasonable time receive 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 or parties requiring telephone service.

7. While this statute, by its language, refers to local exchange service, in Northwestern Bell Telephone Co. v. Consolidated Telephone Co., 180 Neb 268, 142 N.W. 2d 324 (1966) the Nebraska Supreme Court held that long distance service was also subject to its provisions.

8. The statutory language requires that the Commission make finding (1) or finding (2) or finding (3). Thus, if any one of the conditions is met, the other findings are not required.

9. The direct testimony from AT&T witness, Teresa E. Waldmann-Williams states, "With respect to the application for certification filed by U.S. Telephone Inc., AT&T Communications is not opposed to certification of interexchange carriers which can demonstrate the financial, managerial, and technical ability to conduct business in the state of Nebraska." (T-94).

10. While no public witnesses testified either for or against this application, testimony in this hearing and others (docket C-506) leaves little doubt that subscribers are using the services of the applicant for both interstate and intrastate calls.

11. The facilities of the applicant now in place are providing interstate service. Applicant does not propose to construct facilities to be used only for intrastate service, thus no existing facilities will be duplicated as a result of the granting of this application.

12. Applicant called four witnesses in support of its application. James F. Arnold testified as to the financial ability of U.S. Telephone to provide interLATA services to the state of Nebraska. Richard F. Smith addressed the manner in which U.S. Telephone provides its interstate services to subscribers in Nebraska. Jane Hufstedler testified to the proposed services to be offered in Nebraska and the benefits of those services. Benefits include having the choice to decide between one product or another, and the responsiveness to customers' needs which will occur with more competitors in the marketplace. Robert Graniere testified that competition is in the public interest and benefits received from this competition include customer choice, new service offerings, and downward pressure on prices. Mr. Graniere also discussed steps to lessen the problem of illegally made intraLATA calls.

13. Protestant, AT&T, called one witness. Teresa E. Waldmann-Williams testified that AT&T Communications supports the Commission decision allowing fair competition in interexchange telecommunications services in Nebraska. She indicated the benefits of competition would be realized if all interexchange carriers operate under the same rules.

14. Having considered all of the evidence, we find that the application is agreeable to the subscribers and to the telephone companies involved, will not create a duplication of facilities, and is in the public interest and in the interest of the parties requiring service.

15. As part of their application, U.S. Telephone, Inc. has requested "non-dominant carrier" treatment. The tariff proposed by Applicant contains a range of rates which may be varied by the company on one day's notice to subscribers, along with an attachment setting forth the currently effective rates.

16. Any certificated telecommunications common carrier furnishing interLATA service within the State (which includes AT&T Communications) shall be allowed to file with this Commission for its approval, tariffs containing a range of rates and charges for intrastate interLATA service furnished to Nebraska subscribers. The rates and charges may be varied by the company on one day's notice to the Commission. The proposed tariff filed by U.S. Telephone should be approved.

17. While evidence was presented by the applicant of differences between themselves and AT&T Communications, we are not convinced that a dominant/non-dominant form of regulation is appropriate as a general rule. Different regulation between competing carriers will be considered on a case by case basis and only where required by the public interest.

18. This Commission has adopted the F.C.C. Uniform System of accounts for Class A and B Telephone Companies and its own Uniform System of Accounts for Class C & D Telephone Companies. We find that since the F.C.C. has not required these carriers to adopt the Uniform System of Accounts, it is appropriate to allow these companies to follow the same accounting methods as required by the F.C.C.

19. Applicant should be required to file an annual report with this Commission consisting of a copy of any report filed with the F.C.C., a copy of the annual report to stockholders, and for Nebraska, on a combined interstate-intrastate basis, the investment in telephone plant located within the state, accumulated depreciation thereon, operating revenues, operating expenses and taxes.

20. This Commission has approved tariffs of the exchange carriers for access service which contain differentials for Feature Groups A and B versus Feature Groups C and D. After examining the evidence, the Commission finds a discount for Feature Groups A and B is appropriate. We find that the appropriate discount for intrastate interLATA access charges is 25%.

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21. A final matter to be considered is that of unauthorized intraLATA calls. For example, a call received by the system in Omaha and terminated in Norfolk may have actually originated in Council Bluffs, Iowa. With equal access (Feature Group D) no intraLATA calls would reach the interLATA carriers since such calls would be diverted by the local exchange carrier's facilities.

22. We recognize that unlawful intraLATA calls may be carried by interLATA carriers. These carriers should be required to compensate the local exchange company for revenues lost as a result of interLATA carriers handling such intraLATA traffic, or in the alternative to block such calls. For billing purposes it will be assumed that a call entering and exiting an interLATA carrier's network entirely within a LATA are intraLATA calls for which the local exchange carrier is entitled to be compensated.

23. In order to establish an appropriate method of compensation, a separate docket should be initiated on the Commission's own motion to give consideration to the reporting of intraLATA traffic volume by interLATA carriers, average intraLATA toll revenue per minute for Northwestern Bell and LT&T, access or other charges paid to the local exchange carrier and such other factors as may be appropriate. AT&T Communications is included as an interLATA carrier in the foregoing discussion.

24. As modified herein, the application is fair and reasonable, is in the public interest and should be granted as amended.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that application No. C-573 be and it is hereby granted as amended and U.S. Telephone, Inc. be and it is hereby authorized to provide intrastate interLATA communications service in the state of Nebraska.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's Official Certificate of Convenience and Necessity to the applicant to provide interstate interLATA long distance service.

IT IS FURTHER ORDERED that the tariff of U.S. Telephone, Inc., is approved.

IT IS FURTHER ORDERED that applicant shall file in accordance with the applicable statutes, an annual report with this Commission consisting of (1) a copy of any report filed with the Federal Communications Commission, (2) the annual report to stockholders and (3) 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.

MADE AND ENTERED in Lincoln, Nebraska, this 10th day of December, 1985.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold D. Simpson
Chairman

COMMISSIONERS CONCURRING:

Harold D. Simpson
James F. Munnelly
Eric Rasmussen
Duane D. Gay

ATTEST:

Donald Adams
Executive Secretary