BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the application of MCI Telecommunications Corporation, Washington, D.C., for a Certificate of Public Convenience and Necessity to provide IntraLATA Telecommunications Services and Request for Streamlined Regulation.	)	Application No. C-660
	)	GRANTED IN PART
In the matter of the application of AT&T Communications of the Midwest, Inc., Omaha, Nebraska, for authority to provide state-wide interexchange telecommunications services.	)	Application No. C-661
	)	GRANTED IN PART
In the matter of the application of US Sprint Communications Company, New York, New York, for amendment to its Certificate of Public Convenience and Necessity to Include Authority to Offer Intrastate Intra-LATA Inter-exchange Telecommunications Services to the public in the State of Nebraska.	)	Application No. C-670
	)	GRANTED IN PART
	)	Entered: December 16, 1986

APPEARANCES:

For Applicant MCI
Jack L. Shultz, Attorney
P.O. Box 82028
Lincoln, NE 68501
and
William Levis, Attorney
Suite 4200
707 17th Street
Denver, CO 80202

For Applicant and Intervenor AT&T
Richard A. Peterson, Attorney
P.O. Box 5526
Lincoln, NE 68505
and
Mark E. Belmont, Attorney
10825 Old Mill Rd.
Omaha, NE 68154

For Applicant and Intervenor Sprint
Kevin Colleran, Attorney
1900 FirsTier Bank Building
Lincoln, NE 68508
and
Richard Scarola, Attorney
45 Rockefeller Plaza
New York, NY 10111
and
Jack L. Fortini, Attorney
2330 Shawnee Mission Parkway
Westwood, KS 66205

For Protestant Lincoln Telephone and Telegraph Company
Victor E. Covalt, III, Attorney
1500 American Charter Center
Lincoln, NE 68508

For Protestant Great Plains Communications, Inc.
Wyman Nelson, Attorney
1645 Front St.
Blair, NE 68008

For Intervenor Nebraska Telephone Association
Paul Schudel, Attorney
1500 American Charter Center
Lincoln, NE 68508

For Intervenor General Telephone Company of the Midwest
John T. Murray
11 Eleventh Avenue
Grinnell, IA 50112

For Intervenor United Telephone Company of the West
Maria A. Kendro, Attorney
6666 West 110th Street
Overland Park, KS 66211

For Intervenor Northwestern Bell Telephone Company
Richard Johnson, Attorney
100 S. 19th Street
Omaha, NE 68102

BY THE COMMISSION:

By its application filed June 6, 1986, MCI Telecommunications Corporation (MCI) seeks a Certificate of Public Convenience and Necessity, pursuant to Section 75-604 R.R.S., 1943 (Reissued 1981), to provide intraLATA intercity telecommunications services within Nebraska. MCI also requests the Commission to regulate it in a manner consistent with the Commission's order entered August 5, 1985, in Application Nos. C-497 and C-552 wherein MCI (and GTE Sprint Communications Corporation) were granted intrastate interLATA authority.

By its application filed June 17, 1986, AT&T Communications of the Midwest, Inc. (AT&T) seeks a Certificate of Convenience and Necessity authorizing it to provide interexchange telecommunications service between all points in Nebraska. The AT&T application has a two-fold purpose. First, it requests authority to provide intrastate intraLATA interexchange telecommunications service in Nebraska in addition to AT&T's present intrastate interLATA authority.

Secondly, the application seeks to resolve any claim of ambiguity in the scope of the interLATA certificate granted to AT&T by the Commission in Application No. C-460.

By its application filed August 4, 1986, US Sprint Communications Company (Sprint) seeks an amendment to the Certificate of Public Convenience and Necessity issued to it in Application No. C-497, to include authority to provide intrastate intraLATA interexchange telecommunications services to the general public within the State of Nebraska. Sprint's application also requested waivers and exceptions of such Commission rules and regulations as may be necessary to permit it to operate as a "non-dominant" carrier. However, during the course of the hearing, Sprint stated that it, like co-applicant MCI, was seeking to be regulated as an intraLATA carrier in a manner consistent with the Commission's prior order in C-497 granting Sprint interLATA authority.

Protests to the MCI, AT&T, and Sprint applications were filed by Lincoln Telephone and Telegraph Company (LT&T). Great Plains Communications, Inc. (Great Plains) protested the MCI and AT&T applications but not the Sprint application. Petitions of Formal Intervention in all three application proceedings were filed by the Nebraska Telephone Association (NTA), General Telephone Company of the Midwest (General) and United Telephone Company of the West (United). Sprint filed a Petition of Formal Intervention in the MCI and AT&T proceedings. AT&T and Northwestern Bell Telephone Company (NWB) each filed Petitions of Formal Intervention in the Sprint proceeding.

Since each of the proceedings involves essentially the same issue, i.e., a request by a presently certified intrastate interLATA carrier for authority to also provide intrastate intraLATA interexchange telecommunications services in Nebraska, and since the parties to each proceeding are essentially the same, the Commission decided, without objection from any party, to hold a consolidated hearing on the three applications. Pursuant to notice required by law, public hearing was held on the applications on September 17 and 18, 1986, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown.

OPINION AND FINDINGS

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

1. Applicant MCI is a Delaware corporation with its principal place of business at Washington, D.C. Its West Division, which is responsible for operations in Nebraska, is headquartered in Denver, Colorado.

2. Applicant AT&T is an Iowa corporation with its principal place of business at Omaha, Nebraska. It is a wholly owned subsidiary of American Telephone and Telegraph Company.

3. Applicant Sprint is a general partnership existing under the laws of New York. It was formed to conduct the formerly separate long distance telecommunications businesses of GTE Sprint Communications Corporation, a subsidiary of GTE Corporation, and US Telecom-Communications Services Company, a subsidiary of United Telecommunications, Inc.

4. Each of the applicants is presently certified by the Commission to provide intrastate interLATA telecommunications services in Nebraska. Each has existing network facilities in Nebraska, owned and leased, which they now utilize to provide both interstate and intrastate interLATA communications services in the state. These same network facilities would be used by the applicants to provide intraLATA interexchange services if their applications are granted. None of the applicants proposes to construct any new facilities for the purpose of providing intraLATA service. Each would provide essentially the same services in the intraLATA market as they now offer to their interLATA customers, although AT&T does not propose to offer Message Telecommunications Service (MTS) on an intraLATA basis at this time. In the future, as access charges change or as technology evolves, AT&T will consider adding MTS to its intraLATA service offerings.

5. The State of Nebraska has been divided into three Local Access and Transport Areas (LATAs) pursuant to the terms of the Modified Final Judgment (MFJ) entered in United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (D.D.C. 1983), aff'd sub nom, Maryland v. United States, 102 S. Ct. 1240 (1983). Under the terms of the MFJ, AT&T is allowed to provide telecommunications services both between LATAs (interLATA service) and within LATAs (intraLATA service). The former Bell operating companies, such as NWB, are restricted to providing intraLATA service. GTE operating companies, including General, are also restricted against providing interLATA service. On the other hand, independent Local Exchange Companies (LEC's), such as protestant LT&T, are free to provide both interLATA and intraLATA services. A sister company of LT&T, Lintel Systems, has availed itself of this opportunity by obtaining authority from this Commission to provide interLATA service in Nebraska in competition with each of the applicants. Its sister company, LT&T, is the sole certified provider of intraLATA interexchange telecommunications services within the south 402 LATA.

6. Each of the applicants is fit, financially and otherwise, to provide the intraLATA services which they propose. Each is an experienced provider of a variety of interexchange telecommunications services and each has the necessary equipment, facilities, and personnel to commence offering intraLATA services if authorized to do so.

7. Applicant MCI sponsored Dr. Thomas Zepp, a former senior economist on the staff of the Oregon Public Utility Commission. Dr. Zepp testified that competition among providers of interexchange intraLATA telecommunications services will benefit the public by making services more responsive to the subscribers needs; by reducing the price at which these services are offered; and by making available a wider variety of new, higher quality services. He also testified that eliminating the distinctions between intraLATA and interLATA services will make things simpler for the consumer and will lead to the development of tariffs which are easier for people to understand. Dr. Zepp expressed the opinion that adequate telecommunications service is one which allows the consumer a choice, where such a choice is feasible and that, without competition, service is and will remain inadequate within the meaning of Section 75-604.

8. Applicant AT&T offered the testimony of Dr. Dennis Johnson, a professor of Economics at the University of South Dakota. Dr. Johnson testified that competitive markets are desirable because they produce that combination of goods

and services which the consumer most desires; because those goods and services are produced at least cost; and because technological innovation is encouraged. Dr. Johnson also testified that all consumers, including those in so-called non-targeted markets, benefit from competition because the economic efficiency promoted by a policy of competition permeates the fabric of the business environment. Dr. Johnson testified that LATA boundaries are, from an economic perspective, arbitrary and intraLATA markets should not be treated differently, from a policy standpoint, than interLATA markets. He stated that, since it is both technologically and economically feasible for interLATA telecommunications companies to provide intraLATA interexchange service in Nebraska, the maintenance of constraints on either actual or potential competition in the intraLATA market renders the level of service in that market inadequate.

9. Norman Osland, on behalf of the NTA, testified that it is the association's position that the statutory requirements of Section 75-604 should be carefully considered and applied in these cases and that, if the applications are granted, an appropriate access charge mechanism be implemented. He agreed that the NTA's pending access charge case in Application C-627 is the appropriate forum in which to consider the latter issue.

10. The NTA also offered the testimony of Dr. Alan Pearce, a former chief economist of the Federal Communications Commission. Dr. Pearce testified that the economic model, i.e. that of a competitive marketplace, relied upon by MCI's and AT&T's economic experts, is supported by reputable economists and is part of the philosophical underpinning of the United States. He also pointed out that other countries, such as Sweden and Japan, utilize different models in which regulation and monopoly are substituted for competition. He urged the Commission to carefully weigh the arguments for and against intraLATA interexchange competition and to examine the policies being developed by the FCC and other state regulatory bodies.

11. Victor Dobras testified on behalf of intervenor United that it opposed the granting of these applications unless the Commission concurrently adopts the NTA's proposed statewide access charge plan.

12. Frank Hilsabeck testified on behalf of protestant LT&T. LT&T opposes the granting of each of the applications insofar as its 22-county southeastern Nebraska service territory is concerned. LT&T is a sister company of Lintel Systems, Inc. Both companies are wholly-owned subsidiaries of Lincoln Telecommunications Company. Lintel is a certified provider of interLATA service in Nebraska, while LT&T provides local and interexchange intraLATA service within its authorized territory. Mr. Hilsabeck testified that, within LT&T's authorized service area, users of intraLATA interexchange telecommunications services do not now have a choice of service providers. He also testified regarding the technical adequacy of LT&T's present services.

13. No evidence was introduced by Protestant Great Plains or by Intervenors General or NWB.

14. On at least three occasions since August of 1985, the Commission has come down squarely in favor of competition among interexchange carriers where services across LATA boundaries are involved. On August 5, 1985, in Applications C-497 and C-552, we authorized Sprint and MCI to compete with AT&T,

which had theretofore been the sole authorized provider of interLATA telecommunications services in Nebraska. Subsequently, on December 10, 1985, in Application C-573 and on March 11, 1986, in Application No. C-625, the Commission unanimously authorized U.S. Telephone, Inc. and Lintel Systems, Inc., a subsidiary of Lincoln Telecommunications Company and a sister company of LT&T, to compete with AT&T, MCI and Sprint in the interLATA market. In granting these applications, the Commission recognized that interLATA competition was in the public interest because it encourages services which are more responsive to consumer needs, are provided in a more efficient manner, are made available at a lower cost, and are more technologically advanced. Having committed ourselves to a pro-competitive stance with respect to one portion of the interexchange market, the Commission is of the opinion that the benefits of competition should be extended to the rest of that market. There is no logical, legal or practical reason to limit such benefits to the users of telecommunications services which cross LATA boundaries.

15. LATA boundaries were created in the MFJ entered by Judge Greene in United States v. American Telephone & Telegraph Company, supra, as a means of delineating the areas within which the Bell operating companies were allowed to provide telephone service. As such, LATA boundaries are merely lines on a map without either actual or perceived relevance to the consumer of telecommunications services. There is no valid reason for this Commission to adopt a policy which allows the public a choice between several interexchange carriers for calls between Lincoln and Omaha, which are in different LATAs, but which does not allow such choices to exist on calls between, e.g., Omaha and Fremont, or Lincoln and Hastings, simply because the latter pairs of cities are each located in the same LATA.

16. Subpart (1) of Section 75-604 refers to "reasonably adequate telephone service." The determination of what constitutes reasonably adequate telephone service is a factual conclusion to be made by this commission based on the facts and circumstances accompanying each case. It is the opinion of the Commission that the proper interpretation of this standard, when considered in light of today's advanced and evolving technology in telecommunications, should involve more than an examination of the mere technical adequacy of the services the monopoly carrier in a given market chooses to offer. Accordingly, we believe that examination under Section 75-604 should include whether or not an array of service provider choices is technologically and economically feasible. If they are, and if the only reason for allowing such choices to exist in certain geographic areas but not in others is to protect the monopoly position of the sole service provider in the noncompetitive area, then we believe that the public is not receiving reasonably adequate telephone service.

17. There is no doubt that it is both technologically and economically feasible for competition to exist among providers of interexchange telecommunications services in the intraLATA market. MCI, AT&T, and Sprint already have the facilities in place with which they could provide intraLATA service. None of the applicants proposes or contemplates the construction of any new or duplicative facilities just to provide intraLATA interexchange service. The networks they now employ to complete interstate and interLATA calls can and will be utilized to render intraLATA service. The fact that facilities are already in place through which intraLATA services can be rendered demonstrates that competition among the providers of such services is technologically and economically feasible.

18. There is no evidence in the record that establishes a valid basis for drawing the line between competitive and noncompetitive telecommunications services at the LATA boundaries. An arbitrary preservation of this unnecessary monopoly for intraLATA calls will not serve the interests of the local exchange carriers or the consuming public over the long run. Competition in this arena is inevitable. If we preserve this monopoly for the present time the LECs will continue to divert scarce resources to this enterprise and will delay dealing with other telecommunications issues that must be addresssed expeditiously. The preservation of this monopoly will not serve the public interest either. The consumer will suffer from the absence of the benefits derived from competition. If a telephone user may select from a variety of providers, offering a myriad of services, for his calls between Omaha and Lincoln, an interLATA market, yet is confined to the use of one provider for a call between Hastings and Lincoln, an intraLATA market, then the service provided in the intraLATA market is not reasonably adequate in an economic sense. We therefore conclude that the territory within which the applicants propose to offer the interexchange service, i.e., the Nebraska intrastate intraLATA market, is not receiving reasonably adequate telephone service. Having made such a determination, it is unnecessary for us to consider the other two criteria contained in Section 75-604.

19. A distinction should be made at this juncture between local exchange service and intraLATA toll service. At the present time, a vast duplication of plant would be required to bring competition to the local exchange market. This would result in the inefficient use of scarce resources. The Commission believes that unlike intraLATA toll service, local exchange service is a natural monopoly. In the past, the Commission has recognized the difference between local exchange services and interexchange services. This is evidenced by Title 29 Chapter 5 of the Commission's Rules and Regulations. We believe that the recognition of competition in the intraLATA market is not inconsistent with the Commission's ongoing commitment to preserve the integrity of the local exchange boundaries.

20. A secondary purpose of AT&T's application (C-661) is "to eliminate any claim of ambiguity which may exist with respect to the scope and extent of AT&T's existing interLATA authority." AT&T raises this issue because of the differences in the language employed by the Commission in describing the scope of AT&T's authorized interLATA service in contrast to that used in the orders granting similar authority to its competitors MCI, Sprint, U.S. Telephone and Lintel. No one opposed AT&T's request that any "claim of ambiguity" be eliminated. Our granting of AT&T's application for a single comprehensive certificate authorizing it to provide intrastate interexchange telecommunications service within the State of Nebraska will put to rest any questions about the scope and extent of the services AT&T is able to provide on either an interLATA or intraLATA basis.

21. Intervenors have expressed concern regarding the existence of a proper access charge mechanism for compensating local exchange carriers in connection with the providing of intraLATA interexchange service. Consideration of this issue is properly reserved for the pending proceeding in Application No. C-627 in which the Commission will be receiving evidence regarding the NTA's proposed state-wide access charge plan. All interested parties will be given a full

opportunity in that proceeding to express their views on the subject. In our opinion, the granting of these applications effective July 1, 1987 will provide sufficient time for this Commission to consider Application No. C-627 and implement any necessary changes in the current interLATA access tariffs to provide the proper mechanism to compensate local exchange carriers for all intrastate access, both interLATA and intraLATA. Furthermore, we recognize it will take several months, and more probably, several years for the transition to a competitive intraLATA market to significantly impact the present traffic patterns.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application Nos. C-660, C-661 and C-670 be and they are hereby granted effective July 1, 1987; that MCI Telecommunications Corporation be and it is hereby authorized to provide intraLATA intercity telecommunications services within Nebraska; that AT&T Communications of the Midwest, Inc. be and it is hereby authorized to provide interexchange telecommunications service between all points in Nebraska; and that US Sprint Communications Company be and it is hereby authorized to provide intraLATA interexchange telecommunications services to the general public within 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 applicants to provide the service described in the preceding paragraph.

IT IS FURTHER ORDERED that revised tariff pages filed with the applications which amend MCI's and Sprint's current tariffs so as to provide for intraLATA service be and they are hereby approved. These applicants shall file approved revised tariff pages with an effective date of July 1, 1987.

IT IS FURTHER ORDERED that AT&T shall file tariffs containing the provisions governing its intraLATA service offerings and are ordered not to commence any such service until such tariffs have been filed.

IT IS FURTHER ORDERED THAT MCI, AT&T, and Sprint continue to be regulated by this Commission in a manner consistent with the order of August 5, 1986, in Application Nos. C-497 and C-552 and with the provisions of Chapter 5, Section 003 of the Commission's Rules and Regulations.

MADE AND ENTERED at Lincoln, Nebraska this 16th day of December, 1986.

NEBRASKA PUBLIC SERVICE COMMISSION

Chairman

COMMISSIONERS CONCURRING:
//s//James F. Munnelly
//s//Eric Rasmussen
//s//Harold D. Simpson

COMMISSIONERS DISSENTING:

ATTEST:

Executive Secretary

DISSENTING OPINION OF COMMISSIONER BRAYTON

Application Nos. C-660, C-661, and C-670

By a three to two vote, this Commission has departed from the legislative intent of the Boundary Act of 1951 [Neb.Rev.Stat. §75-604 (Reissue 1981)]. By approving these applications, local exchange service providers no longer can rely on the territorial integrity the Legislature clearly sought to protect through passage of the Boundary Act. This then will result in the big users of the local companies being siphoned off by the beneficiaries of this order with a few benefitting at the expense of the majority of rural phone users who will be discriminated against. The concept of universal service at reasonable rates will be available only to larger cities and larger users of local phone service. All Commissioners objected to the passage of LB 835; however, by approving Application Nos. C-660, C-661, and C-670, we are granting intraLATA competition 18 months prior to that possibility occurring under LB 835.

By approving these applications, we are circumventing the will of the Unicameral by prematurely granting intraLATA competition and repudiating current law protecting territorial integrity that local service providers have rightfully relied upon for decades.

I dissent from the majority opinion in these cases and vote to deny each of these applications.

Bob Brayton

Bob Brayton
Commissioner - 5th District

DISSENTING OPINION OF COMMISSIONER GAY

I concur with Commissioner Brayton's dissenting opinion.

The majority of this Commission has interpreted Neb.Rev.Stat. §75-604 in a way, which, I believe, will not serve the best interest of ratepayers or telephone companies in Nebraska. The purpose of the law and the intent of the

Legislature was for establishing exchange boundary integrity so that another telephone company could not be allowed to serve an area already being provided telephone service by a certified telephone company.

The Nebraska Supreme Court has, on several occasions, interpreted the 1951 Boundary Act and "reasonably adequate service" on the ability of the existing telephone company to handle the demand for services within the foreseeable future and that a new certificate cannot be granted until the existing telephone company has refused or failed to provide adequate service. Even in LB 835, which I disagree with, the Legislature did not change the intent of the interpretation of "reasonably adequate service" and, more importantly, specifically told this Commission we had the authority to waive the requirement of §75-604 only after January 1, 1989. I feel the legislative intent is very clear and contrary to the decision of the majority in this case.

In addition, the action by the majority establishes a highly undesirable precedent for local exchange service in Nebraska. Since §75-604 is applicable both to interexchange and local exchange services, and with the interpretation that local exchange users do not have a choice among companies, and therefore service is not adequate, the majority has placed this Commission in a very difficult position to defend and control certification requirements of telephone companies providing local telephone service.

Therefore, I strongly dissent from the majority opinion in these cases and vote to deny each of these applications.

Duane D. Gay

Duane D. Gay
Commissioner - 3rd District