

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-709
Tela Marketing Investments, Ltd.,)
Omaha, Nebraska, for authority to) GRANTED
provide intrastate intraLATA tele-)
phone service.) Entered: June 3, 1987

APPEARANCES: For the applicant
Donald H. Erickson, Attorney
10330 Regency Parkway Drive
Omaha, Nebraska

For protestant, Lincoln Telephone and
Telegraph Company and intervenor,
Nebraska Telephone Association
Paul Schudel, Attorney
1500 American Charter Center
Lincoln, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By its application filed December 30, 1986, Tela Marketing Investments, Ltd., Omaha, Nebraska seeks a certificate of public convenience and necessity to provide intraLATA interexchange telephone communication services in the State of Nebraska.

Notice of the filing of the application was published pursuant to the provisions of the Commission's Rules and Regulations. A protest to the application was filed by The Lincoln Telephone and Telegraph Company and a petition to intervene was filed by the Nebraska Telephone Association.

Pursuant to notice required by law, public hearing was held on the application on April 23, 1987 at 9:30 a.m. in the Omaha Civic Center, Omaha, Nebraska with appearances as shown.

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

1. Tela Marketing Investments, Ltd. is a limited partnership under the laws of the State of Indiana and doing business in Omaha, Nebraska under the name, TMC of Omaha.

2. Tela Marketing Investments, Ltd. is presently certified by the Commission to provide intrastate interLATA telecommunications services in Nebraska. It presently offers service through the resale of WATS and leased lines in Nebraska, Ohio, Wisconsin, and Iowa. In Nebraska, it provides originating service in Omaha, Lincoln, Norfolk, Fremont, Columbus, and Hastings.

3. The State of Nebraska has been divided into three Local Access and Transport Areas (LATAs) pursuant to the terms of the Modified Final Judgement (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 Bell Operating Companies (BOCs) and GTE operating companies are restricted to providing intraLATA service.

4. Applicant is fit, financially and otherwise to provide the intraLATA services proposed. It is an experienced provider of interexchange telecommunications services, serving approximately 4,000 customers in Nebraska. It has the necessary equipment, facilities and personnel to commence offering intraLATA services if authorized to do so.

5. Pursuant to stipulation of the parties, testimony of Dennis Johnson, Thomas Zepp and Alan Pearce given at a September 17-18, 1986 hearing in Applications C-660, C-661 and C-670 was introduced in evidence at this hearing. These witnesses are all economists, witness Johnson testifying for AT&T, witness Zepp for MCI and witness Pearce for the intervenor in this application, Nebraska Telephone Association.

6. Witness Johnson, a professor of economics at the University of South Dakota, 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. He also testified that all consumers, including those in so-called nontargeted markets, benefit from competition because the economic efficiency promoted by a policy of competition permeates the fabric of the business environment. He 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.

7. Witness Zepp, former senior economist for the Oregon Public Service Commission 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. He expressed the opinion that adequate telecommunications service is that which allows the consumer a choice, where such choice is feasible and that, without competition, service is and will remain inadequate within the meaning of Section 75-604 of the Nebraska statutes.

8. Witness Pearce, former chief economist for the Federal Communications Commission, testified that the economic model, i.e. that of a competitive marketplace, relied upon by MCI's and AT&T's witnesses 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.

9. Charles P. Arnold, Senior Vice President-Operations of LT&T testified. LT&T opposes the granting of the application insofar as its 22-county service territory is concerned. Mr. Arnold testified that LT&T presently offers intraLATA interexchange service within its service territory and also testified as to the technical adequacy of its service.

10. Since August of 1985 the Commission has authorized competition among interexchange carriers where services cross LATA boundaries. On August 5, 1985, in Applications C-497 and C-552, Sprint and MCI were authorized to compete with AT&T, which had theretofore been the sole authorized provider of interLATA telecommunications services in Nebraska. Subsequently other competitors, including the applicant, were authorized to provide interLATA service. 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.

11. 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 of interexchange carriers for calls between Lincoln and Omaha, which

are in different LATAs, but which does not allow such choice for 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.

12. 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.

13. 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. Applicant does not propose the construction of any new or duplicative facilities just to provide intraLATA interexchange service. The network now used to complete interstate and interLATA calls can and will be used 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.

14. 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 an unnecessary monopoly for intraLATA calls will not serve the interests of the public. If a telephone user may select from a variety of providers 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 applicant proposes to offer interexchange service, i.e., the Nebraska intrastate intraLATA market, is not receiving reasonably adequate telephone service. Having made such determination, it is unnecessary to consider the other two criteria contained in Section 75-604.

15. On December 16, 1986 in an order on Application Nos. C-660, C-661 and C-670, the Commission authorized AT&T Communica-

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tions of the Midwest, MCI Telecommunications Corporation and US Sprint Communications Company to provide intraLATA interexchange services in Nebraska effective July 1, 1987. This applicant should likewise be authorized to provide intraLATA interexchange services within the State of Nebraska effective July 1, 1987.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-709 be and it is hereby granted and Tela Marketing Investments, Ltd. be and it is hereby authorized to provide intraLATA interexchange telecommunications services to the general public within the State of Nebraska effective July 1, 1987.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's Official Certificate of Convenience and Necessity to applicant to provide the service described in the preceding paragraph.

MADE AND ENTERED at Lincoln, Nebraska this 3rd day of June, 1987.

NEBRASKA PUBLIC SERVICE COMMISSION

Eric Rasmussen
Chairman

COMMISSIONERS CONCURRING:

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

ATTEST:

John Burdette
Acting Executive Secretary