

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Nebraska Public Service Commission,)	Application No. C-801
)	
Relator,)	
vs.)	GRANTED
)	
Lincoln Telephone and Telegraph,)	
a Common Carrier,)	
Respondent.)	Entered: March 5, 1991

APPEARANCES:

For the Respondent:
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For the Commission:
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BY THE COMMISSION:

OPINION AND FINDINGS

By docket opened on March 6, 1990, the Commission ordered an investigation titled, Nebraska Public Service Commission versus The Lincoln Telephone and Telegraph Company (LT&T), a common carrier.

Notice of this docket was published in the Daily Record, Omaha, Nebraska, on March 21, 1990, pursuant to the rules and regulations of this Commission pertaining to notice. Petitions of formal intervention were timely filed by US West Communications Inc., Great Plains Communications, Nebraska Telephone Association, Hamilton Telephone Company, Save Our Service, and the City of Ashland. Petitions of Informal Intervention were timely filed by Henderson Cooperative Telephone Company, Southeast Nebraska Telephone Company, Nebraska Independent Telephone Association, Glenwood Telephone Membership Corporation, Arapahoe Telephone Company, Diller Telephone Company, Clarks Telephone Company, Benkelman Telephone Company, Wauneta Telephone Company and the City of Waverly. The Commission had, prior to the hearings on this matter, granted the timely petitions for formal intervention and had granted the petitions for informal intervention.

The Commission in this order reaffirms its denial of Formal Intervenor status of the Community of Waverly, Benkelman Telephone Company and Wauneta Telephone Company.

Hearings on the Docket were held on October 29, 31, November 1, 2, 5, and 26 in Lincoln, Nebraska City, York, Hastings, Fairbury and Ashland, Nebraska respectively.

1. The Commission's Goal

The Commission received multiple inquiries and several applications for extended area service (EAS) in The Lincoln Telephone and Telegraph Company service area in the past two years. LT&T provides telecommunications service in 137 exchanges, 110 of them have some form of originating EAS. Sixty-three of the 110 have one-way, 43 exchanges have two-way, four exchanges have both one-way and two-way and 27 exchanges have no outgoing EAS. EAS has always been a difficult dilemma for both the communities and the industry. LT&T has consistently opposed applications for extended area service (T-35, line 25; T-37, lines 3-15). EAS is an issue of paramount importance to the public interest in terms of convenience, access and service to subscribers in the state. The Commission found that communities generally do not understand the pricing mechanism of EAS. The Commission opened this docket to investigate the most effective means of providing EAS to subscribers in the LT&T service area. The Commission required LT&T to file a plan which included several elements:

- a. That EAS be offered to all subscribers of LT&T;

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- b. The cost of this new, necessary service be reasonably priced at a flat rate;
- c. The service be offered on an optional basis;
- d. All existing EAS remain available;
- e. All existing one-way EAS be converted to two-way EAS or in the alternative provide new two-way EAS to replace existing one-way EAS;
- f. That with the approval of the applicants, all pending LT&T extended area service applications be held in abeyance until such time as the Commission evaluates the aforementioned plan;
- g. That this plan be submitted for Commission consideration within ninety (90) days from the date of the original order, March 6, 1990.

The Commission goal was that the plan should be revenue neutral, meaning no gain or loss of revenue resulted for LT&T. The Commission further intended to maintain the current quality of service in all respects and to improve the service where possible.

2. The Commission's Authority

Under LB 835, codified as §86-801 Neb. Rev. Stat., (1943), the nature and extent of the Commission's authority to regulate the activities of telecommunications common carriers in Nebraska was substantially altered except in certain circumstances. The Legislature defined extended service area as: "a grouping of two or more exchanges which allows subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge." (§86-802(5)).

In an Attorney General's Opinion issued January 29, 1988, and marked as Exhibit R-6, the Attorney General's responded to the Commission's inquiry as to the scope of its jurisdiction in the area of EAS. The opinion concludes that, "The Commission has no jurisdiction over rates to be charged by telecommunications companies for EAS, as such service does not fall within the specific definition of 'basic local exchange service under §86-802(2).'" However, the Attorney General went on to say, "With respect to non-rate related Commission regulation of EAS, the Legislature has not enacted specific legislation removing Commission jurisdiction over such service; rather, only Commission regulation of rates for telecommunications service offerings other than 'basic local exchange service' has been removed from the Commission's jurisdiction under § 86-801 to 86-811. . . Accordingly, we believe that the Commission retains jurisdiction to regulate the offering of telecommunication services such as EAS, but does not possess authority to regulate rates charged for EAS offering."

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3. The Proposals

The proposed plans are described in general terms below and are for reference only. The exhibits fully explain each plan.

a. On May 4, 1990, LT&T filed an Enhanced Local Calling Area plan with the Commission (Exhibit R-17). The Company proposed the establishment of an Enhanced Local Calling Area which would encompass a 25 mile radius around each of their 137 exchanges and allow calling at a rate of 12¢ per minute for day calls and 6¢ per minute for evening and night calls. Customers would be able to purchase blocks of minutes. Charges for the EAS service and the service itself would be eliminated. Long distance charges outside the 25 mile radius would be reduced to 22¢ per minute for day calls and 11¢ per minute for evening and night calls. All of the elements of LT&T's plan were integral to its viability.

Upon examining the plan, the Commission entered an order directing LT&T to submit an alternative proposal on or before September 1, 1990.

b. The second LT&T proposal filed September 1, 1990 (Exhibit R-25), like the first proposal, had several elements which were integral to its viability. Summarized, these elements are:

i. A 25 mile radius around each of the LT&T exchanges. Rates for calls outside of the community are 6¢ per minute daytime and 3¢ per minute during evening/night.

ii. Four calling plan packages for residential services and for business services.

iii. Reduction of rates for calls over 25 miles.

iv. Establishment of uniform basic local telephone rates at \$11.00 for residential service and three levels for business service.

c. The Commission staff presented an alternate proposal (Exhibit P-5) also designed to be revenue neutral. The staff's plan would establish two rate groups for basic local service; rates of \$11.00 for residence and \$35.00 for business in exchanges having access to less than 100,000 access lines and \$12.50 for residence and \$39.00 for business in exchanges having access to more than 100,000 access lines. Touch call service would be included in the above basic service rates. Residential customers would receive a three hour allowance for calls within the 25 mile radius Enhanced Local Calling Area. Business customers would receive a two hour allowance. For calls over the allowance declining block rates would apply: 6¢ per minute up to 240 minutes, 5¢ for 241 to 360 minutes, 4¢ for 361 to 540 minutes, and 3¢ for 541 and over. In the staff's proposal, calls of over 25 miles would remain at current rates.

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d. The Community of Ashland presented a plan (Exhibit FI-3) in which the local service rates were the same as proposed by the Commission staff except that touch call service was not included. For calls within the 25 mile Enhanced Local Calling Area, a residential three hour allowance and a business two hour allowance applied. Per minute rates were 3¢ for up to 300 minutes, 2¢ for 301 to 600 minutes and 1¢ for 601 and over with a cap of \$20.00 per month. Calls of more than 25 miles would remain at current rates.

e. The Save Our Service group presented a plan (Exhibit FI-6) which would establish flat rates for basic local service of \$13.75 per month for residential customers in the Lincoln Common Service Area and \$12.75 per month for residence customers elsewhere, and \$42.75 per month and \$38.75 per month for business customers respectively. The flat rates would include touch call service and unlimited calling within a 25 mile radius. This proposal also included a reduction in rates for calls over 25 miles to 22¢ per minute daytime and 11¢ per minute evening and night.

Each of the foregoing plans were presented with the intent to be revenue neutral to LT&T, i.e. to generate no additional revenue and to result in no revenue loss.

4. Summary of Testimony and Comments

Mr. Frank Hilsabeck, President of LT&T, testified on behalf of the company at each of the public hearings. Mr. Hilsabeck explained both of the company's proposals and the steps taken to reach each recommendation. Mr. Hilsabeck discussed the company's concerns over disparities between interstate and intrastate toll rates. He testified regarding the pricing components of LT&T and the service arrangements which currently exist within the 22 counties of Nebraska served by LT&T.

Mr. Maurice Gene Hand, Engineer for the Commission, testified on behalf of the staff at each of the public hearings. Mr. Hand explained the staff's recommendation. He testified that technology has developed to the point where every access line should be equipped to process calls placed by either a touch call or rotary dial instrument at no additional cost to the ratepayer. The staff proposal would discontinue the separate charge for touch call service, thereby, including this service as a part of basic local service for all LT&T subscribers.

Mr. Herbert Sherdon, Director of Communications, testified on behalf of the Commission staff explaining the history of EAS, a definition of EAS and the present situation. Mr. Sherdon also presented other staff recommendations for possible alternative EAS plans. One of these was to remove the four hour exclusion between eight a.m. and noon in the Optional Calling Plan to enhance this plan and make it a more viable option. He also advised continued

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oversight of any plan adopted to properly monitor its effectiveness, perhaps on a quarterly basis.

The following facts are illustrative of the interest in this Docket. Approximately 6,235 individuals signed petitions which were mailed in or submitted at the public hearings. More than 800 people attended the public hearings. The Commission received more than 1,200 phone calls on the proposals. The Commission has in the file more than 659 letters.

The LT&T proposals and the staff proposal were filed at the time of the first five hearings. Prior to the last hearing in Ashland, Nebraska on November 26, 1990, Save Our Service filed its plan and at the hearing modified it to be revenue neutral. The City of Ashland also filed their plan at that hearing.

Sixty-eight subscribers testified at the public hearings. People who supported LT&T's plan or any of the proposed plans did so for one or more of the following reasons: They reside in one of the 27 exchanges with no originating EAS (11 with no EAS, 16 with only incoming EAS). They testified that any plan would benefit them because of the lack of basic services currently available to them. They testified that any of the plans would benefit them economically and would help many of the small businesses in their respective communities. Certain witnesses provided copies of bills that were more than \$100.00 a month which exceeded the average bill of other witnesses. Certain witnesses considered improvement in the present system essential for economic development in rural Nebraska.

Most of the public testimony opposed the elimination of current EAS. Comments were especially emotional in the Lincoln and Hastings common service areas. A number of people spoke about not wanting to lose the present system. Much of the public testimony and many letters focused on the perceived inadequacies of the LT&T proposals and the staff proposal. People testified that they needed the EAS they have and further they indicated a willingness to pay a reasonable rate increase to maintain flat rated EAS. Letters and telephone calls were received by the Commission generally mirrored the public testimony.

Approximately thirty letters opposed any rate increase whatsoever. These letters clearly were in the minority of the correspondence the Commission received. These letters discussed the need for affordable telephone service, especially for the elderly.

The petitions and letters are a part of the file and considered by the Commission. The phone calls were informative, direct and indicative of public opinion on a non-admissible, but relevant level.

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5. Summary of the Formal Intervenor's Comments

Comments have been received from formal intervenors concerning the issues surrounding this docket. Those testifying were Michael Pinquoch from Great Plains Communications, Gary Warren from Hamilton Telephone, Paul Korslund for the Save Our Service Committee and Lee Sapp for the Community of Ashland.

The formal intervenors who represented telephone companies were concerned about the extremely complex ramifications that any of the proposals would have on local service rates and existing revenue streams. Concern was expressed that regardless of the claims to the contrary, approval of the Lincoln Plan by the Commission would establish an undesirable precedent for the rest of the state and the industry.

The formal intervenors who represented subscribers submitted proposals as set out above establishing modified EAS plans which included flat rate EAS and reduced toll rates. The formal intervenors showed a great deal of interest in this docket by their participation at the hearings and in the process.

6. Summary of the Informal Intervenor's Comments

Comments have been received from informal intervenors concerning the impact this docket may have on their organizations or communities. The Commission has carefully reviewed these comments and summarizes them below:

a. Prefiled comments were received from the Community of Waverly, and the Benkelman and Wauneta Telephone Companies requesting the Commission to grant them formal intervenor status. The 30 day time period for "formal intervention" was applied to all parties equally. This Commission used the same standard for all interested parties, however, to insure adequate input from all sides it granted multiple opportunities for all interested parties to participate and fully comment. The community of Waverly's comments were compelling on the issue of maintaining EAS.

b. Prefiled statements were received from Clarks Telephone Company, Benkelmen and Wauneta Telephone Companies, Arapahoe Telephone Company, et.al., Glenwood Telephone Membership Corp., Diller Telephone Company, The Nebraska Independent Telephone Association and Southeast Nebraska Telephone Company. These interested parties had several concerns about the impact this docket would have on the entire state. The potential impact on toll rate disparities, inevitable pressure on local rates, settlement issues, and the future of the toll network were discussed. Certain local exchange carriers discussed the pooling arrangements they currently have with LT&T. If these

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arrangements are impacted by this EAS order, it might greatly impact their toll revenue sources. Also, concern was expressed about their own subscribers requesting a similar plan which individual companies could not afford.

FINDINGS

7. On the basis of the evidence presented at the public hearings concerning this Docket, and giving due consideration to the letters, petitions and telephone calls received by the Commission concerning this Docket, the Commission finds that disparities exist in the quality of service being received by LT&T subscribers based upon the existence, nature and extent of EAS currently being provided. The Commission further finds that it is in the public interest to take steps to mitigate and, insofar as practical, to eliminate such disparity.

8. The Commission finds that in order to maintain and improve the quality of service to subscribers throughout LT&T's service area, while maintaining revenue neutrality for LT&T, it is necessary that the Commission revise LT&T's basic local exchange rates, and with the concurrence of LT&T, that LT&T (a) restructure its rates for EAS; (b) establish an Enhanced Local Calling Area ("ELCA") consisting of a 25 mile radius surrounding each LT&T exchange; (c) establish rates for calls within the ELCA; (d) revise toll rates within LT&T's service area; and (e) revise the terms under which LT&T's Optional Calling Plan ("OCP") and Touch Call service are offered. Each of the foregoing elements, which are more fully described hereinafter, are interrelated and mutually dependent. LT&T will not be required to implement any element unless all elements are effectuated in accordance with existing statutes and Commission Rules.

9. Due to the fact that this Docket, as originally commenced, did not contemplate a revision in LT&T's basic local exchange rates, and no notice of any such change has been provided, LT&T shall, pursuant to Neb. Rev. Stat. §86-803 (Reissue 1987) and Commission Rule 002.29, file the Application for Revision of its basic local exchange rates in accordance with the Hearing Officer's Recommendation.

10. Because the revenue neutrality of this plan is subject to estimates of usage and numbers of customers, which estimates are uncertain, the Commission will require reports of LT&T and will monitor the plan for at least a one year period. LT&T should be required to submit monthly reports of revenues, expenses, intraLATA toll minutes and access lines at the time such plan is put into effect.

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In order to assure that both the public interest and LT&T's financial stability is not adversely affected by this Order and the intention that it be revenue neutral for LT&T, the Commission shall retain jurisdiction of this matter to monitor the impact on LT&T revenues for a period of twelve (12) months from the implementation of each of the elements described in the Hearing Officer's Recommendations in paragraphs A through I hereinafter. LT&T shall file a written report of the revenue impact of this Order (a) for the first two (2) month period following its implementation not later than the 15th day of the third month following its implementation; and monthly thereafter. Any action taken by the Commission as a consequence of its reviews shall be in accordance with its authority pursuant to existing statutes and Commission Rules.

The Commission finds that balancing the subscribers' calling needs and telephone company's needs is a difficult act. Counsel for the Community of Ashland described the subscribers aptly as the "Haves and the have-nots". Today technologically advanced telecommunications equipment and facilities exists which would foster business growth and support other rural economic development activities within our state.

The Hearing Officer's Recommendation described below attempts to let the "haves" keep or enhance what they have and allow the "have-nots" to improve their service; all of this with the company retaining the same amount of revenue.

Comments filed by LT&T regarding the hearing officers recommendation stressed several points: That the plan was not revenue neutral; that the plan did not provide toll rate reduction for calls of more than 25 miles terminating within LT&T's service area and that the plan was difficult and complex for telephone customers to understand.

The Commission finds that the differences between the estimates of the staff and the company are the result of differences in the stimulation factors used. The Commission is aware that both the staff and the company's figures are only estimates. The proposal must be monitored and necessary rate adjustments should be made to maintain the revenue neutrality goal of the commission.

11. While acknowledging that it is without authority to set toll rates within LT&T's service area, the Commission recognizes that LT&T's proposed reduction in rates for toll calls outside of the ELCA is desirable. Within ten (10) days after an order entered by the Commission granting the basic local exchange rates recommended by the Hearing Officer, LT&T will file a price list for such toll service to be effective with the change in basic local exchange rates.

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12. The Hearing Officer's Recommendation is a blend of several approaches and has several strengths. The obvious benefit is that it allows current EAS to remain at the option of the customer. It does not abruptly eliminate existing EAS as several other plans proposed. The discounted toll enables callers to reach non-EAS locations at reduced rates. The policy behind reducing touch call rates is sound and is evidenced by several other Commission dockets in this state and across the country. The removal of the four hour optional calling plan restriction is desirable. The optional 60 minute Enhanced Local Calling Area package strengthens the desirability of the plan.

Features of The Hearing Officer's Recommendation

A. There shall be established two rate Groups:

RATE GROUP A - All exchanges that reach Lincoln in their Enhanced Local Calling Area (ELCA)

RATE GROUP B - All exchanges that will not have Lincoln in their ELCA

B. Under this proposal the following local rates are suggested:

Exchanges that have some form of originating Extended Area Service (EAS) today should have the following suggested rates:

	Rate Group A	Rate Group B
Residence (R-1)	\$12.50/month	\$11.00/month
Business (B-1)	39.00/month	35.00/month

Exchanges that cannot originate EAS calls today should have the following suggested rates:

	Rate Group A	Rate Group B
Residence (R-1)	\$11.50/month	\$10.00/month
Business (B-1)	37.00/month	33.00/month

C. Current EAS will be grandfathered. The Commission in this order does not allow for any existing EAS route to be abandoned. EAS surcharges will be optional and suggested prices are as follows:

Residence \$.50 for Beatrice, David City, Pawnee City and Seward

\$1.00 for Lincoln and Hastings

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\$1.50 for all exchanges that have originating EAS not including exchanges listed above or exchanges in the EAS areas surrounding Lincoln and Hastings

\$3.00 for all exchanges in the EAS areas surrounding Lincoln and Hastings

Business \$1.50 for Beatrice, David City, Pawnee City and Seward

\$3.00 for Lincoln and Hastings

\$4.50 for all exchanges that have originating EAS not including exchanges listed above or exchanges in the EAS areas surrounding Lincoln and Hastings

\$9.00 for all exchanges in the EAS areas surrounding Lincoln and Hastings

D. Enhanced Local Calling Area (ELCA) rates are suggested to be reduced by 50%.

Calls within ELCA (25 miles or less)

Day	\$.12/minute
Evening and Night	.06/minute

E. Toll Rates for calls over 25 miles to be reduced:

Calls within LT&T service area (26-55 miles)

Day (8-5)	\$.24/minute
Evening and Night	.12/minute

Calls within LT&T service area (56 miles and over)

Day (8-5)	\$.30/minute
Evening and Night	.15/minute

F. Touch Call Rates:

Residence (R-1)	\$.75/month
Business (B-1)	2.00/month

G. ELCA Package Plan:

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Residential customers without originating EAS or customers that opt out of existing EAS would be provided the option of receiving 60 minutes of calling within their ELCA for \$1.00.

Business customers without originating EAS or business customers that opt out of existing EAS would be provided the option of receiving 60 minutes of calling within their ELCA for \$2.00.

H. Optional Calling Plan:

LT&T will revise its Optional Calling Plan tariff by eliminating all time of day restrictions and make this option available to all subscribers.

I. Service Order Charges:

The service order charge will not apply to the original election of an option nor to one additional selection during the first 90 days the new plan is in effect.

13. This new approach is not the permanent resolution of this dilemma. In adopting this order, the Commission is determined to move forward on the Rule and Regulation #108 to dispose the EAS question for the state. In so doing, the regulatory stage at least is cleared of a long standing controversy in the LT&T territory.

It should be noted that the independent telephone companies are not directly affected by this proposal. It remains to be seen whether independent telephone company customers will demand larger calling areas. We do not believe it is fair to delay improved service to customers of LT&T just to accommodate the unknown potential demand for larger calling areas in exchanges served by independent telephone companies. In Rule and Regulation #108, the independent telephone companies can submit whatever proposals they believe are appropriate for their subscribers.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission in Docket C-801 that the plan set forth in the Opinion and Findings herein which will preserve existing EAS or allow for an Enhanced Local Calling Area for all subscribers of The Lincoln Telephone and Telegraph Company be and it is hereby adopted, effective July 1, 1991.

IT IS FURTHER ORDERED that respondent submit reports of revenues, expenses, intraLATA toll minutes and access lines at the time such plan is put into effect and monthly thereafter until further order of the Commission. Said reports shall be filed within 30 days of the dates to which the report applies. Respondent shall also submit such other reports as may be necessary to evaluate the plan.

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IT IS FURTHER ORDERED that if, after at least six months of operation under the plan, the Commission finds that the plan is not revenue neutral by a significant amount, it may, after notice and hearing, order such changes as it may deem necessary. Any overearning shall be first applied to reduce touch call rates and thereafter as the Commission orders.

IT IS FURTHER ORDERED that The Lincoln Telephone and Telegraph Company submit all necessary applications for approval of this Commission and rate lists which are necessary to place the plan in effect.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of March, 1991.

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

COMMISSIONERS CONCURRING:

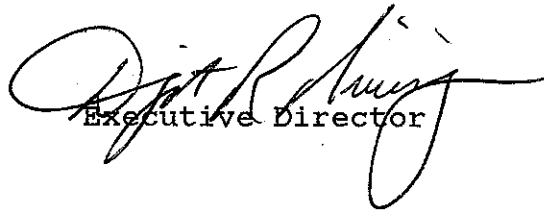


//s//Frank E. Landis, Jr.

//s//James F. Munnelly

//s//Eric Rasmussen

ATTEST:


Executive Director

COMMISSIONERS DISSENTING:

//s//Duane D. Gay