

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In Re the Petition From Subscribers	)	Application No. C-977
of Lincoln Telephone Company's Platts-	)	
mouth Exchange Requesting Extended	)	ORDER TO INSTITUTE
Area Service to the Community of	)	ELCA AND EAS
Omaha, Nebraska Served by US West	)	
Communications.	)	
		) Entered: January 3, 1994

APPEARANCES

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BY THE COMMISSION

O P I N I O N   A N D   F I N D I N G S

I. BACKGROUND

1. This docket was initiated upon the petition of over 1,100 subscribers residing in the Plattsmouth exchange of the Lincoln Telephone Company (LT&T). Howard C. Parrott, City Administrator for the City of Plattsmouth, submitted the petitions to the Commission on February 22, 1993. The petitioners request the Commission to order the implementation of an Extended Area Service (EAS) plan between the Plattsmouth exchange and the Omaha common service area served by US West Communications (US West). EAS petitions are governed by Title 291 NAC Ch. 5, Rule

002.27.<sup>1</sup> We note parenthetically at this juncture that the Plattsmouth calling area and the Omaha service area are separated by a Local Access Transport Area (LATA) boundary. This will be described in greater detail later in the order.

2. On February 23, 1993, M. Gene Hand, Director of this Commission's Communications Department (the Department) wrote to LT&T's Industry Relations Manager, William J. Ashburn, and informed LT&T of the petition and requested the company to file a list of customers in the Plattsmouth exchange in order to verify the signatures contained in the petition. LT&T answered this request March 1, 1993 and at the same time asked for a conference under the Commission's rules of procedure.<sup>2</sup> The Department compared the petition signatures to the subscriber list and determined that the number of valid signatures exceeded the minimum number needed and therefore required LT&T to conduct a usage study. Because of LTT's request, the Commission held a prehearing conference in Plattsmouth May 13, 1993. The Commission sent notice of the prehearing conference to MCI, TMC of Omaha, American Telephone & Telegraph Co. (AT&T), Telenational Communications, LT&T, Cable & Wireless Communications, Inc., Metromedia, WillTel, LDDS/MidAmerican Communications, LiTel, AllNet Communications Services, Long Distance USA, US West, and Sprint, L.P. on May 3, 1993. The conference was attended by the Commission, Howard Parrott, LT&T, and US West.

3. On June 17, 1993, AT&T filed a letter with the Commission informing the Commission of the company's interest in the C-977 docket and requesting that the Commission send AT&T notice of any proceedings and developments.

4. On October 14, 1993, LT&T filed a letter with the Department which stated that LT&T considered its Enhanced Local Calling Area (ELCA) plan to constitute an exemption to the EAS rules and to the request for EAS from the Plattsmouth petitioners. Instead of EAS, implementation of the company's ELCA plan to the Plattsmouth exchange subscribers would create a new rate structure and would allow Plattsmouth subscribers to call within 25 miles of Plattsmouth<sup>3</sup> at the following rates:

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<sup>1</sup> Unless otherwise noted, reference to Commission rules in this order are to those contained in Title 291 NAC Ch. 5.

<sup>2</sup> Title 291 NAC Ch. 1, Rule 020.

<sup>3</sup> The 25 mile zone around Plattsmouth would not, however, extend across the Missouri River into Iowa.

	<u>CURRENT</u>	<u>PROPOSED</u>
<i>Residence (R-1)</i>	<i>\$10.00</i>	<i>\$12.50</i>
<i>Business (B-1)</i>	<i>33.00</i>	<i>39.00</i>
<i>Lamp &amp; Key</i>	<i>39.00</i>	<i>45.00</i>
<i>PBX</i>	<i>49.00</i>	<i>55.00</i>

*ELCA Package Plan: Residential (60 minutes) \$1.00*  
*Business (60 minutes) \$2.00*

*Rates for Calls within ELCA*  
*(25 miles or less)*

*Day (8-5) \$0.12/minute*  
*Evening & Night \$0.06/minute*

5. The ELCA plan which LT&T has submitted in this proceeding resulted from a docket opened March 6, 1990 (Docket No. C-801) in which the Commission ordered an investigation into EAS in the LT&T service area.

## II. COMMISSION AUTHORITY

6. The Commission recognized in its original C-801 Order that EAS has always been a difficult dilemma for the communities and the telephone industry and that EAS is an issue of paramount importance to the public interest in terms of convenience, access, and service to subscribers. The Commission found that communities do not generally understand the pricing mechanism of EAS. Therefore, the Commission sought the most effective means of providing EAS to subscribers and required LT&T to file a plan for review by the Commission. LT&T responded with what became known as, and approved by the Commission as, the ELCA plan.

7. As per the statutory scheme formulated by the Legislature in 1986 (popularly known as LB 835), the Commission retains jurisdiction to regulate the offering of telecommunications services such as EAS, but does not possess authority to regulate the rates charged for an EAS offering. This position is supported by the Attorney General's Office as evidenced by an opinion issued January 29, 1988 which in pertinent part stated: "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). . . 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 offer-

ing of telecommunication services such as EAS, but does not possess authority to regulate rates charged for EAS offerings."

8. Therefore, under the general scope of authority retained by the Commission after LB 835, the Commission may authorize an EAS offering or may, in the alternative, approve an optional calling plan as a substitute as provided by Rule 002.27C. With an ELCA plan such as the one offered by LT&T in Docket No. C-801, the Commission's rate regulation applies to the increase LT&T proposed to place on subscribers' basic local exchange service, but not to the remaining rate increase. As part of its Order approving the ELCA plan in Docket No. C-801, the Commission ordered LT&T to make a new application addressing the increase in the basic local exchange service.

### III. THE PLATTSMOUTH HEARING

9. As regards Docket No. C-977, the Commission held a hearing on this matter on November 12, 1993 in Plattsmouth. LT&T, US West, and AT&T made appearances at the hearing as did Howard Parrott and offered evidence. Testimony from interested members of the public was also placed in the record. At the hearing, LT&T objected to AT&T's participation in the docket except as an informal intervenor or to place a statement on the record as a member of the public.

10. The hearing officer took the objection under advisement. Review of the Commission's procedural rules, specifically Rules 014.02, 015.01B, and 015.02A<sup>4</sup>, shows that AT&T's intervention by letter dated June 17, 1993 was not timely. We therefore grant AT&T leave to intervene as an informal intervenor as provided by Rule 015.02B and we therefore disallow AT&T's participation to the degree it acted beyond the scope of an informal intervenor. We accept the testimony of AT&T's witness, Mr. Bell, as though it was made pursuant to a statement, instead of through direct examination. AT&T objected to LT&T's ELCA proposal as not being properly before the Commission as part of Docket No. C-977. We overrule that objection for the reasons discussed in detail in this order regarding the Commission's jurisdiction over ELCA in general and the Commission's authority to regulate EAS and optional calling plans.

11. Testimony and exhibits placed in the record establishes the following evidence upon which we rely to reach our conclusion that the ELCA plan offered by LT&T, in conjunction with an EAS application from US West, is a satisfactory option to the

<sup>4</sup>Title 291 NAC Ch. 1

Plattsmouth subscribers' petition for EAS. The evidence shows that a community of interest definitely exists between the areas where enhanced local calling is sought. The evidence also shows that Plattsmouth's economic development is being retarded by the current calling plan. Community growth is a worthy social goal and the community should not be penalized by a currently inefficient telecommunications pricing system. Finally, the economic burden on callers in the affected calling areas is simply not acceptable in light of the costs and impact on the community.

12. A comprehensive plan that was two years in the making and adopted in the Spring of 1992 shows that Plattsmouth has tremendous benefits because of its ties with the Omaha metro area. The study indicates that this is a great advantage to Plattsmouth and is one of the keys to the community's future growth and prosperity. With the completion of the Kennedy Expressway, Plattsmouth will be closer to the metro area and will become a more attractive community in which to live. Plattsmouth's population has increased approximately 57% since 1940 with most of the increase coming after 1950. The city's comprehensive plan predicts continued substantial growth because of the proximity to the Omaha metro area. With annexations in the past year, Plattsmouth's population has gone over 6,700 and already exceeds the predicted year 2000 census. The 1990 census shows good growth in the under 10 years of age group, a 1-3/4% increase in the 25 to 29 age bracket, 3.3% increase in the 30 to 44 age group, and an 0.8% of a decrease in the over 45 age group. Plattsmouth and Cass County were each one of the few cities and counties in Nebraska showing population growth from 1980 to 1990. Plattsmouth is a young city age-wise and continues to attract young families. Many of these families have jobs and careers in the Omaha metro area and need an affordable communication tie between their home and place of work or family members. The comprehensive plan predicts Plattsmouth will need 650 single family homes and 277 multi-family units by the year 2000. At a conservative 2.3 family members per unit, a growth of over 2,100 people is anticipated with the majority of them needing affordable communications to and from the metro area. Presently, 45% of Plattsmouth residents travel north to their jobs in Sarpy and Douglas Counties. New home construction in Plattsmouth has been increasing with 31 housing starts to date in 1993. Transportation links have also tied Plattsmouth more directly to the Omaha service area. The early development of US Highway 75 through Sarpy County as a four lane highway has reduced travel time to the north. The scheduled completion of the Kennedy Expressway in 1995 along with the planned improvement of US 75 will provide Plattsmouth with a direct freeway link to Omaha. Travel time to downtown Omaha will be equal to or less than that for many parts of west Omaha. Cass County's economy increasingly resembles that of the Omaha metropolitan area. The county's job base has grown in the service sector by

60%. Conversely, the county provides only 121 factory jobs, a decline of 33% since 1980.

13. A coupon appeared in the local paper on Monday, November 8, 1993 seeking support for the LT&T ELCA proposal by Wednesday, November 10th. In two days, 330 coupons were returned to Howard Parrott's office. All 330 showed support. There was no opposition.

14. In addition to letters of support from private citizens, letters of support were received from: the City of Plattsmouth, the Plattsmouth Chamber of Commerce, the Plattsmouth Industrial Development Corporation, the Cass County Board of Commissioners, the Plattsmouth State Bank, the Plattsmouth Airport Authority, the Plattsmouth Community School System, the Nebraska Masonic Home, the Cass County Bank, the American National Bank of Plattsmouth, the Cass County Clerk, Alan Wohlfarth, the Cass County Assessor, George Tesar, Jr., the Cass County Treasurer, Richard Wassinger, the Cass County Register of Deeds, Patricia Meisinger, the Sarpy County Economic Development Corporation based in Papillion, and C. R. Bell, President of the Greater Omaha Chamber of Commerce. Only three letters expressing opposition were received.

15. Offutt Air Force Base has 338 active duty military personnel who live in Plattsmouth and another 402 retirees. The base averages over 200 calls a day to Plattsmouth. The senior staff at the base, which includes the base legal officer, examined the LT&T's ELCA proposal and, based on the needs of the base and its personnel, Offutt supports the proposal.

16. The service proposed by LT&T entails the following: The ELCA service is currently found in the company's local exchange tariff at 14th Revised Sheet 12, Number 2, "Other Local Exchange Service, Enhanced Local Calling Area". ELCA provides subscribers with the ability to originate intrastate calls to other exchanges within a 25 mile radius of the calling exchange as measured from the originating rate center to the terminating rate center. The ELCA tariff was filed in response to earlier proceedings held by the Commission in Docket Nos. C-801 and C-882 and resulted from the approval by the Commission of the company's ELCA plan. ELCA was the result of two years of study of LT&T's operating territory and these tariffs were the final result of those dockets.

17. To institute ELCA, LT&T proposes to increase the basic local exchange rate structure for the Plattsmouth exchange. R-1 residential rates are currently \$10 per subscriber. ELCA raises this to \$12.50. The B-1 business rate, one party, is currently \$33 and is proposed to rise to \$39. The Lamp & Key (which is a business telephone system trunk charge) is currently \$39. ELCA would raise that rate to \$45. PBX is currently \$49 per subscriber and would go to \$55. Additionally, ELCA

would institute for residential subscribers an optional rate of \$1 for 60 minutes of calling and \$2 for business. Rates for calls that exceed that one hour of usage would be priced during the day, 8:00 a.m. to 5:00 p.m., at 12 cents per minute and evening and night, holidays, and weekends would be six cents per minute.

18. Under this proposal, the mandatory rates would be the basic local exchange rates and the optional rates would be the ELCA package plan. If someone wished not to participate in this package, for example, the 60 minute rate for residential subscribers at \$1 per month, he or she could opt out of that part of the proposal. The pricing for providing expanded ELCA coverage to Plattsmouth is conditioned upon approval of the revised basic local service rates. The proposed rates for the Plattsmouth ELCA plan match the company's system-wide rates as a whole and are in effect for all LT&T customers on a system-wide basis. These rates could be subject to future revision.

19. In the formulation of this proposal to expand the ELCA plan for Plattsmouth, LT&T studied calling statistics for calls between the Plattsmouth exchange and the Omaha area. Exhibit 15 is a traffic study in which the company examined the calls between Plattsmouth and the exchanges in Exhibit 14 for the months of May and June of 1993. Both residence and business calling patterns were studied. The total number of customers who were in the Plattsmouth area during the month of May was 3,674. Some 3,210 customers called the Omaha common service area exchanges, meaning 88% of the customers had at least one call to the Omaha area. In May, 81,401 calls were made to Omaha and those callers averaged 22.2 calls.

20. For the month of June, 3,662 customers were subject to the study. 3,172 or 86.6% of the customers made at least one call to the Omaha calling area. The total number of calls for the month of June was 78,599 those callers averaged 21.5 calls per customer.

21. Upon entry of a Commission Order approving the expanded ELCA as proposed for Plattsmouth and at the rates that LT&T proposes, the service could be implemented subsequent to the completion of some engineering work to make sure the facilities between the communities will function correctly. As regards US West's role in this docket, there is the matter of that company, as a Regional Bell Operating Company subject to the terms of the Modification of Final Judgement, obtaining a waiver of the LATA boundary between Plattsmouth and the Omaha service area. US West is willing to implement EAS from Omaha to Plattsmouth as a result of the Plattsmouth petition. US West will review the total Omaha EAS calling pattern before determining whether an increase in the Omaha EAS price additive is necessary.

22. Also, because Plattsmouth and Omaha are in different LATAs, it will be necessary for US West to secure a Modified Final Judgment (MFJ) waiver permitting US West to provide interLATA service. The company will ask the U.S. Justice Department for an MFJ waiver assuming the Nebraska Public Service Commission approves the Plattsmouth EAS request. The response time from the Justice Department on the MFJ waiver request is estimated to be 90 days.

23. AT&T offered testimony which opposed the LT&T and US West proposals. Because of AT&T's informal intervenor status, we consider its evidence in that light. AT&T argued that approving the proposed LT&T ELCA plan complemented with EAS by US West will replace service which is currently provided on a competitive basis involving ten or so companies and while there appears to be some short term benefits from such an approach, in the long term, competition provides many benefits which would be lost to customers in both exchanges. As regards community of interest, AT&T argued that the type of calling made between Plattsmouth and the Omaha service area should be considered in establishing whether a community of interest exists. For example, personal calls should be distinguished from business calls or calls to obtain basic services.

#### IV. FINDINGS

24. On the basis of the evidence presented at the public hearing concerning this docket, and giving due consideration to the letters and petitions received by the Commission concerning this docket, the Commission finds that a community of interest exists between the subscribers of the Plattsmouth exchange of LT&T and the exchanges of US West comprising the Omaha common service area, and in particular those exchanges in the south portion of the Omaha common service area.

25. The Commission finds that in order to maintain and improve the quality of service to the Plattsmouth exchange subscribers, it is necessary and desirable that the Commission expand the existing ELCA service provided by LT&T to Plattsmouth exchange subscribers by the inclusion of those portions of the Omaha common service area, the exchange offices of which are within a 25-mile radius of the Plattsmouth exchange office, in accordance with the provisions of the following paragraph. In making this finding, it is understood that each of the elements set forth in the following paragraph are interrelated and mutually dependent. LT&T will not be required to implement any element in the following paragraph in connection with the expansion of the Plattsmouth exchange subscribers' ELCA unless all elements are effectuated in accordance with existing statutes and Commission Rules.



26. The Commission finds that the following rates should apply to LT&T's provision of ELCA service to Plattsmouth exchange subscribers:

	<u>CURRENT</u>	<u>PROPOSED</u>
<i>Residence (R-1)</i>	<i>\$10.00</i>	<i>\$12.50</i>
<i>Business (B-1)</i>	<i>33.00</i>	<i>39.00</i>
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*ELCA Package Plan: Residential (60 minutes) \$1.00*  
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*Rates for Calls within ELCA*  
*(25 miles or less)*

*Day (8-5) \$0.12/minute*  
*Evening & Night \$0.06/minute*

27. Due to the fact that this docket, as originally commenced, did not contemplate a revision of LT&T's basic local exchange rates for the Plattsmouth exchange, and therefore no notice of any such change has been provided other than as discussed at the hearing concerning this docket, pursuant to Neb. Rev. Stat. §86-803 (1992 Cum.Supp.) and Rule 002.29, LT&T shall file an application for revision of basic local exchange rates for the Plattsmouth exchange.

28. Consistent with this Commission's findings in its Order entered March 5, 1991 in Application No. C-801, the Commission recognizes that it is without authority to set rates for LT&T's ELCA service in light of existing Nebraska regulatory statutes. However, within ten days after an Order is entered by the Commission granting the revised basic local exchange rates set forth in paragraph 27 above, LT&T is requested to file a Price List for its ELCA service offered to the Plattsmouth exchange subscribers to become effective at such time that the revision in the basic local exchange rates for the Plattsmouth exchange subscribers takes place.

29. The Commission finds that it possesses the authority, as summarized in Part II and in reliance on the Commission's previous Order in Docket No. C-801 to authorize LT&T to provide ELCA service to the Plattsmouth exchange subscribers extended across the existing boundary to those exchanges within a 25-mile radius of Plattsmouth's central office.

30. The Commission finds that subscribers of those Omaha common service area exchanges, which exchanges are within 25-miles of the Plattsmouth Central Office should also have the ability to call subscribers of the Plattsmouth exchange without toll charges in light of the community of interest which this Commission has already found exists between these exchanges. Such ability should be on a mandatory, non-optional basis. In

the testimony of US West's representative, Robert Lanphier, US West stated that at the time of the hearing on this docket, it had not determined whether an increase in the price additive would be required for its Omaha common service area subscribers to receive EAS to the Plattsmouth exchange. Until such time that US West determines that a price increase is required to provide EAS from the Omaha common service area exchanges to the Plattsmouth exchange, the Commission understands that such additional EAS will be provided without additional charge to US West's Omaha common service area subscribers.

31. The Commission, being fully advised, and finds that as a condition precedent to the provision of EAS from the Omaha common service area exchanges to the Plattsmouth exchange, US West must request from the United States Justice Department and the United States District Court for the District of Columbia a waiver of the restrictions placed on US West by the Modification of Final Judgement issued by the district court so as to allow the provision of EAS from the Omaha common service area exchanges across the LATA boundary to the Plattsmouth exchange. Therefore, the Commission finds that it is necessary and desirable that US West be directed to take such steps as are necessary to obtain the required waiver.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Enhanced Local Calling Area service which is currently provided by the Lincoln Telephone Company to the Plattsmouth exchange be expanded to include those exchanges of the Omaha common service area which are within a 25-mile radius of the Plattsmouth central office, such expanded service to be provided in accordance with the findings of this Order.

IT IS FURTHER ORDERED that US West Communications provide Extended Area Service from the exchanges which comprise its Omaha common service area to the Plattsmouth exchange of the Lincoln Telephone Company subject to the precondition that US West shall, as promptly as possible, request from the United States Department of Justice and the United States District Court for the District of Columbia a waiver of the restrictions of the district court's Modified Final Judgement to allow the provision of such Extended Area Service across the LATA boundary which currently runs between the Omaha common service area exchanges and the Plattsmouth exchange, and upon receipt of such waiver, that such Extended Area Service be provided.

IT IS FURTHER ORDERED that the Lincoln Telephone Company submit an application to this Commission for approval of the revised basic local service rates proposed in connection with the expansion of its Enhanced Local Calling Area service to the Plattsmouth exchange subscribers, and that upon approval of such rates, that the Lincoln Telephone Company file any rate

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lists which are necessary to include those Omaha common service area central offices within 25-miles of the Plattsmouth central office as part of the expanded local calling area service in effect for the Plattsmouth exchange subscribers.

MADE AND ENTERED at Lincoln, Nebraska this 3rd day of January, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

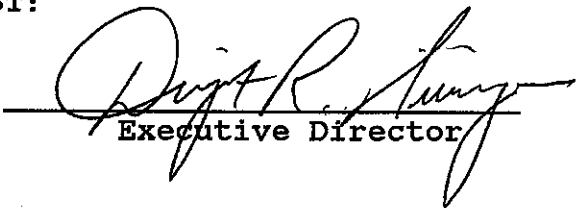
//s//Rod Johnson  
//s//Frank E. Landis, Jr.  
//s//James F. Munnelly

COMMISSIONERS DISSENTING:

//s//Duane D. Gay  
//s//Daniel G. Urwiller

  
Chairman

ATTEST:

  
Executive Director