

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition) Application No. C-1205
from subscribers of Lincoln)
Telephone Company's 234 Exchange) Granted
requesting extended area service)
to the Omaha exchange served by)
US West Communications.) Entered: January 9, 1996

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

This docket was initiated upon the petition of over 350 subscribers residing in the 234 exchange of the Lincoln Telephone Company (LT&T). Armida Hurley, of Cedar Creek, submitted the petitions to the Commission on June 5, 1995. The petitioners request the Commission to order the implementation of Extended Area Service (EAS) between the 234 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. We note parenthetically at this juncture that the 234 (Cedar Creek, Louisville and Manley) 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.

On June 8, 1995, 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 234 exchange in order to verify the signatures contained in the petition. LT&T answered this request June 14, 1995. 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.

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While waiting for the results of the usage study, LT&T filed a Petition of Formal Intervention as an interested party on July 18, 1995 and on July 25, 1995, AT&T petitioned the Commission to grant AT&T formal intervenor status in the docket.

On August 7, 1995, the Commission received the Louisville to Omaha usage study from LT&T showing traffic carried during the months April, May and June, 1995. The usage study indicated substantial use with over 80% of the accounts placing two or more calls to Omaha per month. The average number of calls to Omaha from the 234 exchange exceeded 20,000 per month.

Specifically, the total number of access lines in the 234 exchange during the month of April was 1,072. Of these lines, 840 placed at least two calls to the Omaha common service area exchanges, meaning 78% of the customers made at least two calls to the Omaha area. During April, 1995, 19,130 calls were made with the average number of calls per account being 18 calls.

In May, the number of access lines was 1,073. Of these, 883 placed two or more calls to the Omaha common service area exchanges, meaning 82.3% of the customers made at least two calls to the Omaha area. Over 21,575 calls were made to Omaha during the month of May, the average number of calls per account was 20.1 calls.

In June 1995, the number of access lines was 1,075. Of these, 882 placed two or more calls to the Omaha common service area exchanges, meaning 82% of the customers made at least two calls to the Omaha area. During June, 21,028 calls were made to Omaha during the month, with the average number per account being 19.6 calls.

On November 6, 1995, LT&T filed a letter with the Department which stated that the company would expand its Enhanced Local Calling Area (ELCA) plan to the 234 exchange to include all intrastate calls made within a 25 mile radius, including the Omaha common service area, at the following rates:

	Current Basic Local Rates	Proposed Basic Local Rates
Residence (R-1)	\$10.00	\$12.50
Business (B-1)	33.00	39.00
Lamp & Key	39.00	45.00
PBX	49.00	55.00
ELCA Package Plan:	Residential - 60 minutes	\$1.00
(Optional)	Business - 60 minutes	\$2.00

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Rates for Calls Within ELCA (25 miles or less):

Day (8-5)	\$.12 per minute
Evening & Night	\$.06 per minute

The ELCA plan offered for this proceeding originated 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

The Commission recognized in C-801 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.

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

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 such as the one offered by LT&T in Application No. C-801, the Commission ordered LT&T to make a subsequent application addressing the increase in the basic local exchange service rate.

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III. THE LOUISVILLE HEARING

As regards to Application No. C-1205, the Commission held a hearing on this matter on December 18, 1995, in Louisville. LT&T and US West made appearances at the hearing. Testimony from interested members of the public and written letters were also placed in the record.

Roughly forty people attended the public hearing, with eleven people testifying in favor of the ELCA plan. No one testified in opposition. It was requested by Commissioner Landis for those in favor of the plan to raise their hand. Nearly everyone in attendance indicated support. No one raised their hand in opposition when asked. Various reasons were given by the testifiers for their support, such as medical needs, business opportunities and social contacts.

Testimony and exhibits placed in the record established the following evidence upon which we rely to reach our conclusion that the ELCA plan offered by LT&T, in conjunction with an EAS filing by US West, is a satisfactory option to the 234 exchange subscribers' petition for EAS. The testimony shows that a community of interest exists between the areas where enhanced local calling is sought. The evidence also shows that present economic development is being retarded by the current calling plan. Community growth is a worthy social goal and communities 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 communities.

To institute the ELCA plan, LT&T proposes to increase the basic local exchange rate structure for the 234 exchange. R-1 residential rates are currently \$10 per subscriber. The ELCA plan increases this rate to \$12.50. The business rate is currently \$33 and is proposed to rise to \$39. The Lamp & Key (which is a business telephone system trunk charge) is currently \$39. The ELCA plan would raise that rate to \$45. PBX is currently \$49 per line and would go to \$55. Additionally, the ELCA plan would institute for residential subscribers an optional rate of \$1 for 60 minutes of calling and \$2 for businesses. Rates for calls that exceed the one hour of usage would be priced during the day, 8:00 a.m. to 5:00 p.m., at 12 cents per minute; with evening and night, holidays and weekends fixed at six cents per minute.

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 would not subscribe to it. The pricing for providing expanded ELCA coverage to the

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234 exchange is conditioned upon approval of the revised basic local service rates. The proposed rates for the 234 exchange ELCA plan match the company's system-wide ELCA rates and are in effect for all LT&T customers.

Upon entry of a Commission Order approving the expanded ELCA as proposed for the 234 exchange and for 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. Regarding US West's role in this docket, they are a Regional Bell Operating Company and are subject to the terms of the Modification of Final Judgment. Therefore, they must obtain a waiver of the LATA boundary between the 234 exchange and the Omaha common service area. After the waiver has been granted, US West will implement EAS from Omaha to the 234 exchange. US West indicates it will review the total Omaha EAS calling pattern before determining whether an increase in the Omaha EAS price additive is necessary. Robert Lanphier of US West stated that at this time, the EAS price will remain unchanged.

IV. FINDINGS

On the basis of the evidence presented at the public hearing and giving due consideration to the letters received by the Commission concerning this docket, the Commission finds that a community of interest exists between the subscribers of the 234 exchange served by 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.

Consistent with this Commission's findings in its Order entered March 5, 1992, 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, the Commission maintains jurisdiction over all increases in basic local service rates. Therefore, LT&T must submit an application to the Commission for approval of the requested increase in the basic local service rates. The ELCA plan will become effective concurrent with the revision in the basic local exchange rates.

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 expand its ELCA service to the 234 exchange subscribers by including all Nebraska exchanges within a 25-mile radius of the 234 exchange center.

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The Commission finds that subscribers of the Omaha common service area should also have the ability to call subscribers of the 234 exchange without toll charges in light of the community of interest which this Commission believes exists between these exchanges. Such ability should be on a mandatory, non-optional basis.

The Commission, being fully advised, finds that as a condition precedent to the provision of EAS from the Omaha common service area exchanges to the 234 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 234 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 (ELCA) plan should be expanded in the 234 exchange to include all Nebraska exchanges which are within a 25-mile radius of the 234 exchange center.

IT IS FURTHER ORDERED that US West Communications provide Extended Area Service from the exchanges which comprise its Omaha common service area to the 234 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 Judgment 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 234 exchange, and upon receipt of such waiver, that such Extended Area Service be provided.

IT IS FURTHER ORDERED that Lincoln Telephone Company submit an application to this Commission for approval of revised basic local service rates proposed in connection with expanding the Enhanced Local Calling Area plan to the 234 exchange subscribers, and upon approval of such rates, that the Lincoln Telephone Company file rate lists which revise the ELCA to include those Omaha common service area central offices within 25-miles of the center of the 234 exchange.

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MADE AND ENTERED at Lincoln, Nebraska this 9th day of
January, 1996.

COMMISSIONERS CONCURRING:



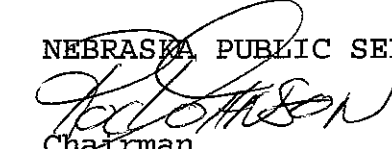
//s//Rod Johnson

//s//Frank E. Landis

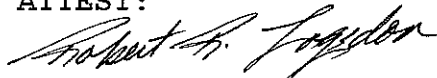
//s//James F. Munnely

//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
