

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Petition                    ) Application No. C-1277  
from subscribers of Lincoln                    )  
Telephone Company's Yutan Exchange        ) Granted  
requesting extended area service            )  
to the community of Omaha, Nebraska        )  
served by US West Communications.        ) Entered: August 1, 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 225 subscribers residing in the Yutan exchange of the Lincoln Telephone Company (LT&T). Eileen Kellogg, of Yutan, submitted the petitions to the Commission on December 6, 1995. The petitioners request the Commission to order the implementation of an Extended Area Service (EAS) plan between the Yutan 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 Yutan 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 December 7, 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 Yutan exchange in order to verify the signatures contained in the petition. LT&T answered this request December 20, 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.

On February 14, 1996, the Commission received the Yutan to Omaha usage study from LT&T. The usage study indicated substantial use with over 85% of the accounts placing two or more calls to Omaha per month. The average number of calls to Omaha from the Yutan exchange exceeded 21,000 per month.

Application No. C-1277

PAGE TWO

On May 9, 1996, 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 Yutan exchange petitioners. Instead of EAS, LT&T proposes to implement the company's ELCA plan to the Yutan exchange subscribers at the following rates:

	<u>Current</u>	<u>Proposed</u>
Residence (R-1)	\$11.00	\$12.50
Business (B-1)	35.00	39.00
Lamp & Key	41.00	45.00
PBX	51.00	55.00
ELCA Package Plan:		
Residential - 60 minutes		\$1.00
(Optional)      Business - 60 minutes		\$2.00

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

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

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

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.

As per the statutory scheme formulated by the Legislature in 1986 (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

Application No. C-1277

PAGE THREE

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 Docket No. C-801.

### III. THE YUTAN HEARING

The Commission held a hearing on this matter on July 18, 1996, in Yutan. LT&T and US West made appearances at the hearing. Testimony from interested members of the public was also placed in the record.

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 Yutan exchange 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 area's 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.

Application No. C-1277

PAGE FOUR

To institute the ELCA, LT&T proposes to increase the basic local exchange rate structure for the Yutan exchange. R-1 residential rates are currently \$11 per subscriber. The ELCA plan raises this to \$12.50. The B-1 business rate, one party, is currently \$35 and is proposed to rise to \$39. The Lamp & Key (which is a business telephone system trunk charge) is currently \$41. The ELCA plan would raise that rate to \$45. PBX is currently \$51 per subscriber 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 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; with evening and night, 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. The proposed rates for the Yutan exchange ELCA plan match the company's system-wide rates.

In the formulation of this proposal to expand the ELCA plan for the Yutan exchange, LT&T studied calling statistics for calls between the Yutan exchange and the Omaha area. The usage study compiled the calls between Yutan and Omaha for the months of September, October, and November, 1995. Both residence and business calling patterns were studied. The total number of customers who were in the Yutan area during the month of September was 675. Of these customers, 581 placed more than two calls to the Omaha common service area exchanges, meaning 86% of the customers made at least two calls to the Omaha area. During September, 21,257 calls were made with the average number of calls per account being 31.5 calls.

In October, the number of customers was 680. Of these customers, 589 placed more than two calls to the Omaha common service area exchanges, meaning 86% of the customers made at least two calls to the Omaha area. Over 22,023 calls were made to Omaha during the month of October, with the average number of calls per account being 32.4 calls.

In November, 1995, the number of customers was 685. Of these customers, 600 placed more than two calls to the Omaha common service area exchanges, meaning 87% of the customers made at least two calls to the Omaha area. During November, 22,410 calls were made to Omaha during the month, with the average number per account being 32.7 calls.

Application No. C-1277

PAGE FIVE

Upon entry of a Commission Order approving the expanded ELCA as proposed for the Yutan 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. As regards to US West's role in this docket, there is the matter that the company, as a Regional Bell Operating Company, must obtain a waiver to carry traffic across the LATA boundary between the Yutan exchange and the Omaha service area. US West is willing to implement EAS from Omaha to the Yutan exchange as a result of the Yutan exchange petition. US West will ask the Federal Communication Commission (FCC) for a waiver once the EAS request has been approved.

#### IV. FINDINGS

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 Yutan exchange of LT&T and the exchanges of US West comprising 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, within ten days after an Order is entered by the Commission granting the revised basic local exchange rates, LT&T is requested to file a Price List for its ELCA service offered to the Yutan exchange subscribers to become effective at such time that the revision in the basic local exchange rates for the Yutan exchange subscribers is approved and the ELCA plan is implemented.

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 Yutan exchange subscribers to those exchanges within a 25-mile radius of its exchange center.

The Commission finds that subscribers of the Omaha common service area exchanges should also have the ability to call subscribers of the Yutan exchange without toll charges in light of the community of interest which this Commission has already

Application No. C-1277

PAGE SIX

The Commission finds that subscribers of the Omaha common service area exchanges should also have the ability to call subscribers of the Yutan 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, it had not yet determined the price additive required for its Omaha common service area subscribers to receive EAS to the Yutan 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 Yutan exchange, the Commission understands that the EAS will be provided without additional charge to the Omaha common service area subscribers.

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 Yutan exchange, US West must receive from the FCC, a waiver of the restrictions placed on US West to carry traffic across the LATA boundary so as to allow the provision of EAS from the Omaha common service area to the Yutan 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 should be provided to the Yutan exchange to include those exchanges of the Omaha common service area which are within a 25-mile radius of the Yutan 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 Yutan exchange of the Lincoln Telephone Company subject to the precondition that US West shall, as promptly as possible, request from the Federal Communications Commission, a waiver of the current restrictions to allow the provision of Extended Area Service across the LATA boundary which runs between the Omaha common service area exchanges and the Yutan exchange.

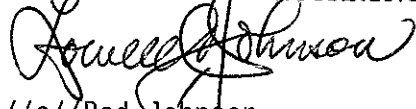
Application No. C-1277

PAGE SEVEN

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 Enhanced Local Calling Area service to the Yutan exchange subscribers, and that upon approval of such rates, that the Lincoln Telephone Company file any rate lists which are necessary to include those Omaha common service area central offices within 25-miles of the Yutan center as part of the enhanced local calling area service in effect for the Yutan exchange subscribers.

MADE AND ENTERED at Lincoln, Nebraska this 1st day of August, 1996.

COMMISSIONERS CONCURRING:



//s//Rod Johnson

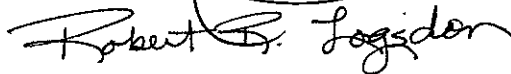
//s//Frank Landis

//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION

Chairman

ATTEST:



Executive Director

