

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-1298  
of AT&T Communications of the )  
Midwest, Inc. for an amendment )  
to its Certificate of Convenience ) GRANTED  
and Necessity to provide local )  
exchange telecommunications )  
service within the State of )  
Nebraska. ) Entered: October 8, 1996

APPEARANCES:

For the Applicant:  
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and

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BY THE COMMISSION:

By its application filed February 29, 1996, AT&T  
Communications of the Midwest, Inc. ("AT&T") seeks an amendment

to its certificate of convenience and necessity to provide local exchange telecommunications service within the state of Nebraska. The following parties filed petitions for formal intervention: Blair Telephone; Cambridge Telephone; Clarks Telephone; Consolidated Telco Inc.; Consolidated Telephone; Curtis Telephone; Glenwood Telephone Membership Corporation; K & M Telephone; Keystone-Arthur Telephone; Lincoln Telephone & Telegraph Company; Nebraska Independent Telephone Association; Nebraska Telephone Association; Pierce Telephone; Southeast Nebraska Telephone; Stanton Telephone; TCI Communications; United Telephone Company of the West; US WEST Communications, Inc. The following parties filed petitions for informal intervention: Hartington Telephone; MCI Telecommunications Corporation; Cox Communications Omaha and TCG Omaha. A prehearing conference was held on May 10, 1996. An evidentiary hearing was conducted on June 13 and 14, 1996. Thereafter several parties submitted posthearing briefs, and closing arguments were heard by the Commission on August 19, 1996.

In addition to exhibits filed by the parties which are part of the record herein, the parties provided testimony of the following witnesses:

Charles L. Ward, testifying on behalf of AT&T as follows: Mr. Ward stated that AT&T is a subsidiary of AT&T Corporation, which has \$89 billion in assets, greater than any other telecommunications carrier providing or seeking to provide local exchange service in Nebraska. AT&T has the managerial competence and capability to provide local exchange service in Nebraska. AT&T's operations as a reseller and as a facilities-based provider will be managed by AT&T Corporation's Western Region Local Service Organization, which is headquartered in Denver, Colorado. Other AT&T Corporation organizations will be integrated as appropriate to ensure that all of AT&T's operational needs in Nebraska are satisfied. Mr. Ward further testified as to AT&T's technical resources and abilities. Currently, AT&T draws upon its considerable technical resources and expertise in the provision of interexchange services to customers in Nebraska. AT&T has demonstrated the ability to run a very complex and large telecommunications network.

Competition in the provision of local exchange services will produce a number of benefits including: improved efficiency in the provision of services, accelerated deployment of technological innovations, improved customer service, and innovative services to meet consumer needs and increased choice among providers for consumers.

Once a certificate of authority is granted, AT&T must take several other steps before services are in fact provided. These steps include negotiating and perhaps arbitrating interconnection agreements with incumbent local exchange carriers. These interconnection agreements must be filed, considered and approved by the Commission before AT&T can actually provide local exchange services. With respect to rural areas, AT&T must first make a bona fide request for interconnection. Then, the Commission must determine whether the rural exemption created by the Federal Telecommunications Act of 1996 should be lifted. Finally, AT&T must file tariffs which must be approved by the Commission.

Initially, AT&T plans to provide local exchange service through resale of incumbent local exchange carrier services. Once market conditions allow, AT&T will provide its own facilities-based service to Nebraska consumers. AT&T plans to serve the local exchange market in Nebraska on a statewide basis, just as it is currently doing in the long distance market. The pace with which AT&T will develop detailed plans for additional interconnection negotiations and the introduction of services throughout Nebraska will depend in part on the terms and conditions in AT&T's interconnection agreements with incumbent local exchange carriers and in part on customer response and market demand for AT&T services. The Commission should grant AT&T's application to provide statewide local exchange service and not grant certificates on a piecemeal basis for individual areas so as to avoid creating two classes of telecommunications consumers -- those who receive the benefits of local competition and those who do not.

Rural companies may be exempt from some of the obligations imposed by the Federal Act on other incumbent local exchange carriers, if they meet the rural exemption status under the Federal Act. AT&T in the past has consistently supported the universal service fund as a mechanism for affordable service and will continue to do so on both a federal and state basis.

It is AT&T's full intention to be bound by the provisions of existing and future state and federal laws, rules and regulations, except to the extent that those laws, rules and regulations are preempted by the Federal Telecommunications Act.

Steven Wildman, testifying on behalf of the Nebraska Independent Telephone Association, testified that AT&T possesses adequate financial resources to provide local exchange service in the state of Nebraska. Dr. Wildman did not dispute AT&T's managerial or technical resources and competence.

Dr. Wildman expressed concern about AT&T's entry into the local exchange telecommunications market being a threat to the concept of universal service. He also testified that AT&T's

entry into the local telephone market may have a harmful effect on rural communities.

Gary Warren, testifying on behalf of the Nebraska Independent Telephone Association, conceded that AT&T possesses the financial resources, the managerial competence, and the technical resources and competence needed to provide local exchange service in the state of Nebraska.

Mr. Warren asserted that the Commission should not grant AT&T's certificate for areas in which AT&T has no "immediate plans" to serve. Mr. Warren admitted that AT&T's application does not suggest that AT&T intends to serve anything less than the entire state of Nebraska.

Mr. Warren further said that the Public Service Commission should establish standards before granting a local exchange service certificate to AT&T. He recommended that the Commission wait until January 1, 1997, before accepting such applications for local exchange service authority. Mr. Warren offered no suggestions as to what standards should be established.

John N. Rose, testifying on behalf of the Nebraska Independent Telephone Association, agreed that AT&T has the financial resources, managerial competence and technical competence and resources required to provide local exchange service in the state of Nebraska.

Mr. Rose asserted that there should be no local competition until new entrants are designated as "eligible telecommunications carriers" under the Federal Telecommunications Act for purposes of universal service fund support.

Charles L. Fast, testifying on behalf of the Nebraska Independent Telephone Association, agreed that AT&T's financial resources, managerial competence and technical competence and resources were sufficient to provide local exchange service in the state of Nebraska.

Mr. Fast expressed concerns that local competition may not be in the public interest. It would not be economically feasible for two facilities-based local exchange carriers to serve some sparsely populated areas. Whether the resale competition might endanger Mr. Fast's company's status would depend on the interconnection agreements reached between his company and the new entrant.

Dwight Wininger, testifying on behalf of the Nebraska Telephone Association, objected to AT&T's application for two reasons. First, he is not sure what standards should be used to judge the application. He recommended the Commission continue to apply the standards set forth in Neb. Rev. Stat. § 75-604.

Secondly, the certificate should not be granted on a statewide basis but rather should be geographically limited to the areas AT&T intends to serve immediately.

Mr. Wininger expressed his fears that granting AT&T's application will remove protections for rural carriers. There should be no local competition until new entrants are designated as "eligible telecommunications carriers" under the Federal Telecommunications Act for purposes of universal service fund support.

A. L. Bergman, testifying on behalf of US WEST Communications, stated US WEST does not oppose AT&T's application. Mr. Bergman agreed that AT&T possesses the financial resources, managerial competence and technical competence and resources to provide local exchange service in the state of Nebraska.

US WEST requests that the Commission attach the following conditions to any certificate it grants AT&T:

- (a) Forbid the resale of residential service to business customers.
- (b) Prohibit resale of basic local exchange service as a substitute for switched access service.
- (c) Prohibit AT&T from purchasing and reselling already discounted retail services ("double discounting").
- (d) Prohibit AT&T from jointly marketing interLATA and local services in violation of Section 271(e)(1) of the Federal Telecommunications Act.
- (e) Require AT&T to provide a more detailed statement of its plans to provide local exchange services in Nebraska, including maps; classes of services; proposed investment and facilities versus resale; and an approximate timeline for serving customers.
- (f) Require AT&T to comply with the same regulations and service standards as U S WEST.
- (g) Require AT&T to contribute to the universal service fund.

Howard Bell, on behalf of AT&T, submitted rebuttal testimony. Mr. Bell stated there is nothing inconsistent between universal service and local competition.

No other intervenors introduced testimony or evidence.

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

On February 8, 1996, President Clinton signed into law the Federal Telecommunications Act of 1996, opening the way for competition in all corners of the telecommunications market. One primary purpose of the Act is to promote the development of competition in local exchange service markets. To implement this purpose, the Federal Act requires incumbent local exchange carriers to resell their service to new entrants and to open their existing facilities under interconnection agreements which must be negotiated or arbitrated, and then approved by the state commissions. The Federal Act contemplates simplifying and reducing existing regulations to expedite entry by new local exchange carriers by removing all barriers to entry. Section 253(a) provides:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

By enacting LB 835 in 1986, the State of Nebraska adopted a pro-competitive policy toward the provision of telecommunications services. That pro-competitive policy is set forth in Neb. Rev. Stat. § 86-801 (Reissue 1994) which provides:

The Legislature declares that it is the policy of the state to:

- (1) Preserve affordable telecommunications services;
- (2) Maintain and advance the efficiency and availability of telecommunications services;
- (3) Ensure that consumers pay only reasonable charges for telecommunications services; and
- (4) Promote diversity in the supply of telecommunications services and products throughout the state.

This Commission finds that it should embrace and adopt the pro-competitive policies of the Federal Telecommunications Act of 1996. The Commission further finds that competition in the provision of local exchange service is likely to produce the following benefits: improved efficiency in the provision of services; accelerated deployment of technological innovations;

improved customer service; innovative services to meet consumer needs; and choice of providers for consumers.

Section 75-604 of the Nebraska Revised Statutes (1994 Cum. Supp.) is a barrier to entry and has been preempted by the Federal Telecommunications Act of 1996 to the extent that it requires that, before granting a certificate of convenience and necessity, the Commission must find one of the following three conditions to exist:

- (a) The territory in which the applicant proposes to offer telecommunications service is not receiving reasonably adequate telecommunications service;
- (b) The portion of the territory of another telecommunications company in which or into which the applicant proposes to construct new facilities or extend its existing facilities is not and will not within a reasonable time receive reasonably adequate telecommunications service from the telecommunications company already serving the territory; or
- (c) The application is agreeable to the subscriber or subscribers and to all telecommunications companies involved in the matter, will not create a duplication of facilities, and is in the interest of the public and the party or parties requiring telecommunications service.

As it currently does when evaluating applications for certificates of authority to provide interLATA interexchange services, the Commission will consider applications, including AT&T's application, for authority to provide local exchange service in light of the following criteria and standards:

- (a) Whether the applicant has provided the information required by the Commission;
- (b) Whether the applicant has provided a performance bond, if required;
- (c) Whether the applicant possesses adequate financial resources to provide the proposed service;
- (d) Whether the applicant possesses adequate technical competence and resources to provide the proposed service;

- (e) Whether the applicant possesses adequate managerial competence to provide the proposed service; and
- (f) Pursuant to Section 253(b) of the Federal Telecommunications Act, whether granting the applicant a certificate preserves and advances universal service, protects the public safety and welfare and ensures the continued quality of telecommunications services and safeguards the rights of consumers.

These criteria (See Neb. Rev. Stat. § 86-805 (Reissue 1994)) are appropriate for both the interexchange market and the local exchange market. Section 75-604, on the other hand, includes criteria intended and appropriate only in a monopoly environment.

AT&T has demonstrated that it meets and exceeds the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange service, both facilities-based and resale, in Nebraska. No party to this proceeding refuted AT&T's competence. Most parties appearing at the hearing, in fact, conceded that AT&T was competent. No performance bond is required.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide local exchange service. All telecommunications carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set out herein.

Before AT&T is allowed to provide local exchange service to its users:

- (a) AT&T, either through negotiation or arbitration, must reach interconnection agreements with the incumbent local exchange carriers providing service in Nebraska; and
- (b) The Commission must approve the various interconnection agreements.

This order does not terminate, waive or in any manner diminish the exemption and protections created by the Federal Telecommunications Act for rural carriers, as defined in the Federal Act. This order does not address the issue of the rural local exchange carriers' exemption under the Federal Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Federal Act.



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Prior to providing local exchange service in any area in the state of Nebraska, AT&T must file, and the Commission must approve, tariffs in accordance with the provisions of Section 002.21 of Neb. Admin. R. & Regs. tit. 291, ch. 5.

As a provider of local exchange service in the state of Nebraska, AT&T would be subject to the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service, restrictions on joint marketing and quality of service), applicable to any other local exchange company except those obligations imposed on incumbent local exchange carriers pursuant to Section 251(c) of the Federal Telecommunications Act.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1298 be and is hereby granted.

IT IS FURTHER ORDERED that upon final approval of the interconnection agreements, AT&T is granted authority to provide local exchange service, both on a resale basis and facilities basis, to the areas covered under the specific interconnection agreements. AT&T need not make any further application to this Commission for authority to provide local exchange service in this state.

IT IS FURTHER ORDERED that, before AT&T is allowed to provide local exchange service to areas currently served by rural local exchange carriers, as defined by the Federal Telecommunications Act, that all of the requirements set forth in the Federal Telecommunications Act must be evaluated.

IT IS FURTHER ORDERED that AT&T is obligated to abide by the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service, restrictions on joint marketing and quality of service), applicable to other local exchange carriers except obligations imposed on incumbent local exchange carriers pursuant to Section 251(c) of the Federal Telecommunications Act.

IT IS FINALLY ORDERED that this Order be and hereby is made the Commission's official certificate of convenience and necessity to the applicant to provide local exchange service within Nebraska.

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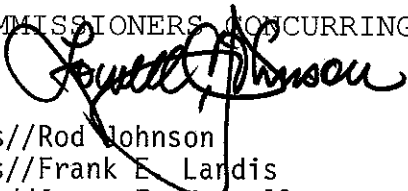
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MADE AND ENTERED at Lincoln, Nebraska, this 8th day of  
October, 1996.

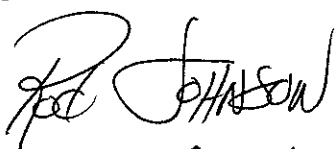
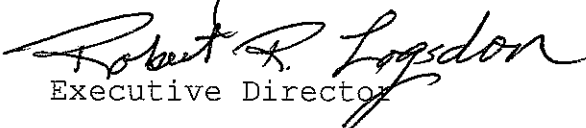
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

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

Chairman

ATTEST:

  
  
Executive Director