BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to conduct an inquiry into the impact of the pending Aliant/ ALLTEL merger.	) Application No. C-2016/PI-26)) Findings)) Entered: June 8, 1999

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BY THE COMMISSION:

Background

By letter dated March 9, 1999 (merger letter), Aliant Communications, Inc. (Aliant) notified the Commission that it intended to enter into a merger transaction with ALLTEL Corporation (ALLTEL).

On March 23, 1999, the Commission, upon its own motion, entered an "Order Initiating Inquiry" to investigate the impact of the pending Aliant/ALLTEL merger. Notice of the opening of this docket was published in The Daily Record on March 24, 1999. The Communications Workers of America (CWA), Nebraska Technology & Telecommunications, Inc. (NT&T;) and Benkelman, Diller, Henderson and Wauneta Telephone Companies (the Independents) each filed as formal intervenors in the docket.

In the Order Initiating Inquiry, the Commission requested that interested parties submit comments to the Commission regarding the merger. The Commission set a public hearing on the issue for April 20, 1999. The Commission also directed that Aliant and ALLTEL conduct two informal public meetings in cities within Aliant's service area.

On May 17, 1999, under separate caption, Robert Biel, Rev. Lauren Ekdahl, Dennis Martin, Marvin Morrison, and James Willis (petitioners) filed a petition addressing the same issues raised in both the written comments filed in this docket and in the testimony offered at the hearing. Therefore, the Commission voted at its May 27, 1999, public meeting to merge the petition into this docket. In this order, the Commission specifically addresses the concerns raised by petitioners in their filing.

By letter dated March 29, 1999, Aliant requested the Commission hold a Prehearing Conference to establish procedural guidelines for the conduct of the public hearing on this matter. On April 14, 1999, the Commission held a Prehearing Conference in the Commission Hearing Room with appearances as shown above.

On April 16, 1999, the Commission entered a Prehearing Conference Order setting forth the procedures to be followed at the hearing. After notice, the Commission held a hearing on the matter in a legislative format at the Nebraska Center for Continuing Education in Lincoln. Approximately 200 members of the public were in attendance and were invited to come forward to make statements. The Commission also received hundreds of phone calls from people wishing to express concerns about the merger.

In addition to other presenters, petitioners Ekdahl and Martin testified at the hearing on behalf of the CWA. All portions of the hearing were recorded, transcribed, and are made part of the record in this investigation.

E V I D E N C E

Aliant and ALLTEL each produced one witness at the hearing. Mr. Frank Hilsabeck, the president and chief executive officer of Aliant, appeared on behalf of Aliant. Mr. Skip Franz, executive vice president of ALLTEL, appeared on behalf of his company. Mr. Franz indicated that he is responsible for ALLTEL's business development efforts, federal and state legislative and regulatory activities, and legal affairs. Mr. Hilsabeck and Mr. Franz each made opening statements, then answered questions from Commissioners and Commission staff. The following is a summary of the testimony.

The Parties

Mr. Hilsabeck, Mr. Franz, and the merger letter provided the following information about the parties to the merger:

Aliant - Aliant Communications, Inc. is the parent company of Aliant Communications Co. (Aliant Co.), Aliant Midwest (Midwest) and Aliant Systems (Systems) (jointly Regulated Companies). Aliant Communications Inc. is not a certificated or otherwise regulated carrier in the state of Nebraska. Aliant Co. and Midwest each hold a certificate for the provision of basic local exchange and interexchange service. Systems holds a certificate for the provision of interexchange service. Through its subsidiaries, Aliant is the primary provider of local telecommunications services in the 22-county area of southeast Nebraska and is a competitive local exchange carrier in several other Nebraska communities. It also provides long distance and internet services in this region and is a leading provider of cellular service in the state.

ALLTEL - ALLTEL is a Delaware Corporation that is publicly traded on the New York Stock Exchange, with its corporate headquarters in Little Rock, Arkansas. ALLTEL owns subsidiaries that provide wireline local, long-distance, network access and internet services, wireless communications, wide-area paging service, and information processing management services, and advanced applications' software.
Skip Franz, executive vice president of ALLTEL, testified that like Aliant, ALLTEL's roots are in the local telephone business and it continues to operate in primarily rural exchanges. Aliant would be the largest contiguous local service area served by ALLTEL. ALLTEL has grown by acquiring other companies and by expanding into diversified businesses. In 1998, ALLTEL had annual revenues of $5.2 billion, and a net income of $580 million. At the end of 1998, the company had $9.4 billion worth in assets, with 48 percent of such assets being represented by equity. Moody's and Standard and Poor's gave ALLTEL credit ratings of A2 and A respectively. In 1998, ALLTEL spent $870 million on capital investments.

ALLTEL has two principal business segments, communications and information services. The Communications segment is the larger of the two, representing $3.5 billion of ALLTEL's 1998 revenue. The communications segment consists of wireless, wireline, and emerging businesses. Emerging businesses consists of ALLTEL's investments in long distance, PCS, Internet, local competitive access, and network management operations. ALLTEL is the sixth largest wireless provider, and the sixth largest wireline provider in the country. ALLTEL has over 4-million wireless customers, approximately 2-million wireline customer, and 500,000 long distance customers in 23 states. This year, ALLTEL will complete construction of an 8,500 mile fiber network. ALLTEL serves primarily rural areas. Ninety-five percent of the company's exchanges have fewer than 10,000 access lines, 85 percent have fewer than 5,000, and only 30 of ALLTEL's 574 exchanges have more than 10,000 access lines. Across ALLTEL's service area, they average 3,300 access lines per exchange. ALLTEL has approximately 22,000 employees. About 2,000 of those employees are union employees.

Structure of The Merger

As set out in the merger letter, ALLTEL formed a subsidiary, Merger Sub, specifically for the merger with Aliant. Merger Sub will merge into Aliant. Aliant will be the surviving entity thus becoming a wholly-owned subsidiary of ALLTEL. After the merger, ALLTEL will own all shares of Aliant. The stock of each of the regulated companies will continue to be owned by Aliant. As such, the merger will not effect a change in the actual provision of telecommunications services by Aliant Co., Midwest, or Systems.

Service to rural communities

Mr. Hilsabeck testified that Aliant has invested in the networks serving rural communities. He expressed concern with Aliant's ability to continue to serve very expensive rural exchanges with growing competition in Lincoln. Other carriers have sold off their rural exchanges. The advances being made by the Commission in access charge reform and universal service make it more financially feasible to continue to serve these exchanges. Whether independently, or as a subsidiary of ALLTEL, Aliant has no plans to pull out of these communities nor will the company "retreat from [its] support of the universal service and access reform policies being implemented by the Commission."

Interconnection Obligations

Mr. Hilsabeck pointed out that after the merger, Aliant Co. will still be the certificated carrier in the state after the holding company merges with ALLTEL. Therefore, there will be no change in Aliant's legal obligations. "We, the new merged company, will continue to meet our regulatory and legal obligations in this regard and will honor the terms and conditions of the agreements previously negotiated and which this Commission has approved."

Benefit of merger

Hilsabeck testified that Aliant has been able to offer bundled services in a timely fashion and at competitive rates. However, it is his belief that these objectives would be more efficiently and cost effectively met through an agreement like the one described above.

Aliant employees

Aliant employs 1,698 people, mostly in Nebraska. In 1996, they employed 1,683 people before retiring 330 people. Even after these reductions, Aliant employs more people today than it did then. Some jobs were eliminated then; however, the company also created new jobs in new areas. Hilsabeck testified that Aliant filled the jobs needed in order to provide quality service. Mr. Hilsabeck indicated that he wanted to point this out so that people would not "jump to conclusions" about workforce reductions. In any merger, there will be jobs that are duplicated and may be eliminated. We have been clear about this from the beginning. Many of Aliant's employees know that their job is going to be moved or eliminated but simply do not know when. Mr. Hilsabeck did not know when either. "We are working diligently to determine exactly when the hand-offs, changeovers and conversions can take place. When we know, we will notify the employees promptly. I can assure you that none of the jobs involved in providing quality services to customers do not fit into that category." After the merger, Aliant will keep a minimum of 900 employees in Lincoln for the next two years and beyond.

This decision will depend in part on changes in the industry, introduction of new products and services, and ALLTEL's growth in the market area. During Skip Franz's presentation, he testified that other than possibly a few management people, ALLTEL did not intend on bringing ALLTEL employees into Nebraska. Mr. Franz also stated that because ALLTEL's competitive imperative is that all competition is local, it will be important to retain every Aliant employee who will contribute to achieving the competitive mission.

None of the benefits included in our current labor agreements will be affected by the merger, and those agreements are in effect until October 2001. Non-union employees have been informed that total benefits will be no less favorable in the aggregate through December 31, 2001. Aliant has notified its retired employees that their retirement benefits will not change. Anyone that chooses to retire between now and December 2001 will enjoy the same benefits that current retirees enjoy.

Capital investment

Aliant has invested $30 million in its network during 1996, $42 million in 1997, and $54 million in 1998. At the time of the hearing on this docket, Aliant was approved for capital expenditures of $66 million for 1999. A significant amount of this was made and is being made to meet its regulatory obligations and its obligations to interconnecting competitors.
Mr. Hilsabeck noted that the driving force behind this investment is Aliant's commitments to quality service and the need to meet customer demands.
Mr. Hilsabeck indicated that this commitment to the network is not going to diminish because they are operating as an ALLTEL subsidiary. Mr. Hilsabeck stated that Aliant's affiliation with ALLTEL will improve Aliant's access to capital and the ability to keep up with changing and diversified demands. It is the position of Aliant that a telecommunications network is never finished and is in constant need of improvement and modernization. In the past three years, Aliant has invested $47 million in its cellular network.

Why ALLTEL chose Aliant as a partner for the merger

Mr. Franz testified that the strategy of ALLTEL's communications business is to assemble relatively concentrated geographically clustered operations in the more rural areas of the country and to offer to those markets a full complement of bundled communications services. Aliant and ALLTEL should benefit each other in this merger because " our culture values and rural telecom heritage are so similar, and also because of their shared commitment to expanding our offering of high quality services."

Impact of the merger on customers, employees and communities

Franz testified that this merger will mean that customers will have a continuation of a single point of contact for existing relationships in the communities where the company operates and a complete bundled product offering utilizing ALLTEL's extensive infrastructure systems, processes, and know-how at a price that represents a good and fair value for the quality service provided. ALLTEL understands that it will not succeed in this competitive market unless it has satisfied customers. Franz testified that ALLTEL devotes considerable time and effort to measure the levels of satisfaction of customers through feedback from them. This feedback is qualified and ALLTEL customer service teams are evaluated on the basis of these rankings. These customer satisfaction rankings are born out of rankings from the Federal Communications Commission (FCC) and other state public service commissions (PSCs). In its annual complaint index ranking, the FCC ranked ALLTEL best in 1996, and third out of 12 in 1997 in the number of complaints per $1,000,000 of revenue.

In reference to a J.D. Powers survey indicating that ALLTEL ranked low in customer satisfaction, Mr. Franz stated that ALLTEL's lack of position on the list tells very little about the quality of the company's service or the satisfaction of ALLTEL's customers. Mr. Franz stated that the survey was intended to measure brand awareness on a national scale with large urban centers having the most weight.

Neither Aliant nor ALLTEL knows exactly what functions will be duplicated after the merger or what jobs will be eliminated. However, Mr. Hilsabeck did indicate that most of the back room operations, the accounting departments, some of the regulatory analysis sections, some of the corporate communications areas, some of the engineering, planning, budgeting will be undoubtably consolidated. Some of these could be relocated to Little Rock or other cities within ALLTEL's service area. However, some may be located in Lincoln. The principal customer serving organizations would remain in Lincoln. It would be impractical to try to dispatch somebody to install a telephone out of Little Rock every morning. Mr. Hilsabeck testified that Aliant has tried to be forthcoming with its plans once they know. Aliant does not want to invest money training someone for a job, or allow a person to sit in a job, that will be eliminated. For instance, in the accounting department, Aliant has already sent out a "mini-resume" and letter of interest to find out what their qualifications, education and experience are and what other interests may be in the event that positions are no longer here beyond a certain date.

Mr. Hilsabeck testified that the merger agreement provides that Aliant's labor agreement with the CWA will be honored through the term of that agreement (October 16, 2001).

The Communications Workers of America (CWA) also presented six witnesses. Rich Boucher, legal counsel for the CWA, made a few opening comments before CWA's witnesses addressed the Commission. Mr. Boucher expressed concern that there was, in his opinion, only minimal emphasis placed upon force reduction issues, efforts to decertify the CWA, and what will happen after October 17, 1999, when contracts with the CWA expire.

Dennis Martin, president of CWA Local 7470, testified: Through his leadership role with the CWA, he represents more than 700 technicians, operators, customer service representatives, clerks, and other employees at Aliant. He expressed concern that ALLTEL has not provided information about its plans in Nebraska after the merger. He believes that the Commission has both the legal and moral authority to investigate the acquisition of Aliant and ensure that it will bring benefits to employees, to consumers, and to Nebraska. Mr. Marin continued that although the merger is structured at the holding company level, ALLTEL is still purchasing a telecommunications carrier whose business is almost exclusively in Nebraska. The control of the company will shift to Little Rock. No current members of Aliant's board will be added to ALLTEL's board and none of Aliant's managers will be promoted to ALLTEL's corporate management.

Martin testified that ALLTEL's purchase of Aliant will result in the loss of 330 jobs in Lincoln. The purchase will result in a loss in investment in the telephone network with a deterioration in service quality and delayed deployment of new technologies and services. In its March 24, 1999, filing before the Securities and Exchange Commission, ALLTEL only commits to maintain 900 jobs in Lincoln in the two years following the acquisition. There are currently 1,200 Aliant employees in Lincoln. Thus, the proposed acquisition would result in 330 job cuts in Lincoln at this time. ALLTEL does not make any commitments regarding Aliant's other 500 employees throughout Aliant's service area. Mr. Martin expressed concern that with these possible job cuts, Aliant consumers will experience a deterioration in service quality because there will not be enough employees to install and repair lines, and to answer calls to Directory Assistance or the business office.

Mr. Martin also expressed concern that ALLTEL will reduce key medical and other benefits for current and retired employees. Aliant has always been a progressive hometown employer that understands the connection between a high-skilled career work force and quality service. As a result, Aliant and CWA have negotiated a compensation package that is in line with telecommunications industry standards, including fully-paid medical care for active and retired employees, employees pay 10 percent for family coverage, an employer-matched savings plan, petition benefits, and general education benefits to upgrade workers' skills. Martin stated that ALLTEL views its employees as costs rather than as assets. It pays only $80 per month toward retiree health benefits. This means that retirees pay from $300 to $560 per month for family coverage. ALLTEL has also capped active employee medical benefits, which means that employees pay as much as $180 per month in Kentucky and Georgia and $280 per month in Ohio for family coverage. ALLTEL does not provide education benefits to its employees. Mr. Martin expressed concern about ALLTEL's apparent practice of cutting jobs after it buys a company. Mr. Martin relayed several comments he heard from ALLTEL employees in other states concerning ALLTEL's elimination of jobs and contracting out of certain functions to lower-waged contractors. Mr. Martin indicated that customers know the difference a trained, skilled, and stable workforce can make to the quality of service provided. Mr. Martin said that he believes this is the reason that ALLTEL ranked the lowest in customer satisfaction out of 12 carriers ranked in a 1998 JD Powers and Associates survey. Mr. Martin said that to ensure that consumers do not experience a reduction in service level, the Commission should require ALLTEL to maintain or increase current employment levels. He also stated that the Commission should prohibit ALLTEL from making any cuts in current or retired employee benefit levels. Mr. Hilsabeck's statement that retirement benefits were not going to change did not allay Mr. Martin's concerns on that issue.

John Thompson, assistant vice president for CWA District 7 in Denver, Colorado, also appeared on behalf of the CWA. Mr. Thompson testified: His district consists of 14 states, including Nebraska. Based on the statistics presented by Mr. Martin, Mr. Thompson believes that Nebraska consumers will see a serious deterioration in the high-quality service Aliant customers are accustomed to and will experience a delayed deployment of next-generation telecom services. Mr. Thompson stated that ALLTEL has a service policy of diverting local telephone profits away from local telephone operations and as a result has among the worst customer satisfaction in the nation. In the JD Powers survey cited above, ALLTEL falls four points behind rural carriers like GTE and Sprint in customer satisfaction, and 17 points below the industry average. Aliant on the other hand, has the lowest customer complaint rate among the top four carriers in the state, including GTE and Sprint.

Mr. Thompson stated that there is a direct connection between job cuts and declining service. After US West reduced employment in 1993 and 1994, customer complaints skyrocketed. US West responded to this personnel shortage by turning to contractors. Contractors do not invest in their workforce. As a result, their work is sub par.

Mr. Thompson recommended that the Commission look to other states to see what we can do to ensure that merger-related cost cutting does not reduce service quality and network investment. Thompson stated that in reviewing the SBC-Pactel merger, the California Commission required that SBC take such steps as creating at least 1,000 new jobs in the state and meeting specific performance standards. The New York Commission required Bell-Atlantic to hire 750 to 1,000 new employees when the company acquired NYNEX. Mr. Thompson also pointed to actions by Connecticut, Ohio, and Illinois commissions concerning mergers in those states.

Debbie Goldman, a research economist for CWA out of Washington, D.C., was the next to testify for the CWA. Ms. Goldman's testimony focused on the levels of investment in the Nebraska telecommunications network and the impact the purchase will have on the new entity. In developing her testimony, Goldman relied upon documents that were filed by the companies with the SEC and the US Department of Agriculture.

In assessing what impact the merger will have on the levels of investment in the Nebraska telecommunications network, Ms. Goldman stated that she wishes she could refer the Commission to information provided by the companies, but no such information has been provided. Based upon ALLTEL's past practices, the purchase of Aliant would result in $375 million in profits being up streamed out of the state to Little Rock in each year. About one-fourth of ALLTEL's corporate revenue comes from local telephone companies. Wireless generates about 40 percent of the revenues, with non-telecommunications business lines generating about one-third. The business with the highest profit margin is the local telephone company at 36 percent. Therefore, Ms. Goldman concludes, ALLTEL uses the cash generated from this high-profit margin local business to subsidize its investments in other growth areas. Looking at the cash flow of the local companies is helpful in determining to what extent ALLTEL uses its local telephone operations to subsidize other operations. In 1997, ALLTEL's local telephone company profits amounted to about $100 million. Each of these subsidiaries paid dividends from those profits to the corporation. The CWA has developed a test to assess whether the amount actually paid by local telephone operations represents their "fair share." Based upon the percentage of capital ownership or stockholder equity of the telephone company as a proportion of the entire parent corporation, the CWA calculates what should be the amount that each company would be contributing as its "fair share" of the profits. Under the CWA's analysis, if ALLTEL's local company share of corporate shareholder equity or ownership of capital is 28 percent, then their fair contribution to the corporate parent would be 28 percent of total dividends paid out by the parent to its stockholders. In 1997, ALLTEL's telephone subsidiaries did represent 28 percent of total shareholder equity, but contributed a full 48 percent of the dividend payment made to ALLTEL shareholders. The total value of these excess dividends in 1997 was $42.8 million, which means that this amount was not retained as part of the capital base of the local telephone subsidiary. She testified that if ALLTEL used this same ratio after ALLTEL purchased Aliant, ALLTEL would upstream 37.5 million in dividend payments to ALLTEL corporation after the merger. This includes $16.1 million in excess dividends that would otherwise be retained in the capital base in the Nebraska telecommunications network.

Ms. Goldman then testified to what she projected the impact of ALLTEL's merger with Aliant will have on the post-acquisition combined company. To make this projection, Ms. Goldman testified that she used traditional financial ratios of standalone Aliant to the post-acquisition combined company using data filed in 1998 by Aliant and ALLTEL. From conducting this analysis, CWA predicts that the post-acquisition combined company will be more highly leveraged than the Aliant of today. The combined company will also be less efficient in generating revenue and income off its asset base and will have a lower profit margin. Ms. Goldman summarized the ratios she used to reach these conclusions. Those ratios are also included in the written comments she submitted with her testimony.

Reverend Lauren Ekdahl of Trinity United Methodist Church in Lincoln was the next person to testify on behalf of the CWA. Rev. Ekdahl testified: He was offering his testimony because he is deeply concerned about the ethical relationships between people and how they are expressed within a community. He is also interested in fairness issues, especially with respect to the investment of both human and financial capital in the life of community citizens. He holds a strong belief that good corporate citizenship requires that a fair amount of profits from the corporation remain in the local community. He is concerned about the way Aliant employees will be treated, and what will happen after current labor contracts end on October 17, 2001. He is also concerned about the families of those employees who depend upon fair treatment for a healthy and hopeful life in the community. As an Aliant consumer, he is concerned that the quality of telecommunications services will decline after the merger. He questions the ethics of merging with a company that has "not been concerned about providing the highest kind of quality service" and that has a track record of moving a disproportionate amount of profits out of the community. He questions the ethics of this type of "pillaging" of the human and financial resources to "benefit just a few" within the company. He was really disturbed to read about the cash incentives and job continuation agreements that were publicly announced because he believes this represents collusion between those who will profit the most personally from the deal and those who seek an opportunity to pillage the profitably of this company.

Finally, Rev. Ekdahl expressed concern that the spirit of good corporate citizenship and fair treatment of personnel will be moved away from Lincoln. He believes that after the merger, customer satisfaction will "take a back seat to a concern for the profitability of the broader corporate goals" which have little connection or concern for Lincoln. Skip Franz's response that ALLTEL has 2,000 union employees out of 22,000 suggests that ALLTEL has not had much labor-management negotiation experience.

Walter Bleich of the Nebraska Citizen Action Network also testified on behalf of the CWA. Mr. Bleich testified: The question the Commission should be asking is whether the proposed merger is in the best interests of Nebraska consumers. The merger is a result of the Federal Telecommunications Act of 1996. Bleich stated that the Act promised consumers lower rates, but it has not delivered on those promises. The Act promised that there would be an increase in competition in telecommunications markets which would lower prices. Instead, there was a flurry of large mergers resulting in less competition. Most of the legal points raised by ALLTEL indicate that the Commission does not have "authority to rule on this matter." Bleich stated that this is an all-too-familiar claim made before this body by telecommunications companies. The PSC is supposed to be the Nebraska consumers' first line of protection. "Until this body truly starts to flex its authority, or in those cases where authority is lacking, prods the Legislature into granting them that authority, the Nebraska consumer will remain at the mercy of any telecommunications company that wants to take advantage of them." The Commission should at least get some kind of binding agreement from ALLTEL, not only for minimal requirements of customer service but also assurances for Aliant's work force. It should also require that ALLTEL maintain a local office to address customer service problems. Mr. Bleich also raised a concern that four Aliant executives will receive $10,000,000 in bonuses if the merger succeeds, while Aliant's workers will only get "pink slips."

Ms. Judy Gant, owner of a Lincoln travel agency, was the last person to testify on behalf of the CWA. Ms. Gant testified: She was appearing before the Commission as the owner of a small business. She is concerned about what effect losing the local phone company will have on her business. She may lose services or customers who are currently employed by Aliant. In her business, she spends 80 percent of her time on the telephone. If service quality declines, it could drastically affect her business.

After receiving testimony from the parties and intervenors, the Commission invited members of the public to testify.

Ms. Betty Jeanne Holcomb-Keller of Lincoln testified: She practices elder law and is an Aliant consumer. In her testimony she addressed the "human side" of the merger, "as opposed to all of the facts and figures." Many in the community feel that this acquisition is a danger to the community. The retirees have already expressed their concern about medical benefits being decreased in two or three years. Some of them have said that this will cause them to lose their homes. Ms. Holcomb-Keller stated that the Commission has heard the facts and figures about the merger but has not seen the faces and reactions of many of the people who are going to be affected by this situation. The transfer of a $100,000,000 retirement fund out of the banks of Nebraska concerns her, as well as the other types of damage that can occur with this type of takeover. It is the human situation where the consequences of an acquisition will affect people, not only the employees but the consumers.

Gary Baker, an employee of Aliant, was the last member of the public to testify at the hearing. He stated that he has invested 22 years of his life in Aliant as an employee. He is also a consumer and a shareholder. He has always been a positive supporter of the company and has taken pride in working for Aliant.

When he started with Lincoln Telephone and Telegraph, he felt it was a place of honor with good people who really cared. He is concerned that the company will "take a dive" when the merger with ALLTEL goes through. He still is a loyal and faithful employee and does not want to appear as a saboteur. For 22 years, his friends and neighbors have looked at him as synonymous with the phone company. After investing his life in the company, he takes the merger personally. He is not against progress and has seen a lot of progress with Aliant. He just fears that the future does not look as good as the past.

Commissioner Landis asked that Mr. Hilsabeck and Mr. Franz be recalled to answer a few follow up questions.

In response to Commissioner Landis' questioning, Mr. Hilsabeck testified that he did not foresee any negative impact on Aliant's large customers, such as the University of Nebraska. The same people that have installed and worked on those systems will continue to do so. Mr. Hilsabeck anticipates that there may be enhancements down the road. Mr. Hilsabeck did acknowledge that there would be some concerns about not doing business with a local company. However, after the merger, the company will continue to employ people locally in Nebraska to meet the service needs of the customers.

Commissioner Landis questioned Mr. Franz about ALLTEL's efforts to de-certify unions. Mr. Franz stated that the decision to de-certify a local is within the province of the bargaining unit employees. The company has no role or right to de-certify any local. ALLTEL has indicated that it does not believe that it is necessary to have collective bargaining units for the conduct of business.

There were no further commentors or testimony, and the hearing was adjourned.

F I N D I N G S

The intervenors and presenters raised concerns about quality of service, network investment, loss of jobs, treatment of employees, ALLTEL's commitment to Nebraska communities, and what will happen after the current labor contracts expire. We share each of these concerns and have proceeded to address them since the announcement of the merger. As such, the Commission makes the following findings:

1. Commission Jurisdiction over the Merger

At least with respect to consumers, we agree with the statement of Dennis Martin that the Commission has the legal and moral authority to "investigate . . . this acquisition of [Aliant] to ensure that it will bring benefits . . . to consumers, and to Nebraska." That is the reason we opened this docket and conducted the proceeding described herein. However, whether the Commission has authority to approve or deny the merger is different from our authority to investigate the impact of the merger and to ensure that the surviving entity lives up to its obligations in Nebraska.

There are limits to our scope of authority. Based upon the structure of the merger as described above, and the Commission's statutory authority found in Neb. Rev. Stat. 75-146, the Commission made a preliminary determination that it did not have jurisdiction to approve, modify, condition, or deny the merger. In their petition, petitioners specifically asked that the Commission address this issue. Aliant, ALLTEL, and the intervenors addressed this issue in the comments that were filed prior to the hearing. Upon review of the comments, the applicable statutes, and information regarding the merger obtained at the hearing, the Commission finds that as structured, Aliant and ALLTEL do not have to seek Commission approval prior to the merger taking effect.

The Commission's authority with respect to mergers is found in Neb. Rev. Stat. 75-146. This section states:

> No common carrier other than a railroad shall consolidate its stock, property, franchise, or earnings, in whole or in part, with any other competing common carrier without permission of the commission . . .

Section 75-146 is conceptually based upon Neb. Const. Art. X, sec. 3, which states:

> No . . . common carrier shall consolidate its stock, property, franchise, or earnings in whole or in part with any other . . . common carrier owning a parallel or competing property without permission of the Railway Commission [now know as the Public Service Commission] . . .

The purpose of §75-146 and Article X, §3 is to require the Commission to review transactions that would reduce or limit competition. Further, that review is limited to transactions directly involving a regulated entity.

The merging parties are not competitors. ALLTEL and Aliant do not compete against each other in any market or for any service in Nebraska. Further, the merger does not directly involve a regulated entity. ALLTEL does not have a certificate of authority in Nebraska. Aliant Communications, Inc. is the parent company of three regulated companies but is not certificated in-itself or otherwise a regulated carrier in Nebraska.

Therefore, while we have the ability to investigate the merger, and to insist that ALLTEL live up to its legal obligations as a common carrier once the merger is consummated, we do not have the authority to deny the merger.

Mr. Bleich stated that until the Commission "truly starts to flex its authority, or in those cases where authority is lacking, prods the Legislature into granting them that authority, the Nebraska consumer will remain at the mercy of any telecommunications company that wants to take advantage of them." However, even if the Legislature had given us authority to review the merger under the current test applied to mergers, it is doubtful that we would have any grounds upon which to deny the transaction.

When reviewing mergers, the Commission examines whether the acquiring company has the financial, managerial, and technological competence to act as a carrier in our state. We would also have to determine whether the merger was in the public interest. These are the issues into which the Commission has inquired in C-2016. The Commission gathered evidence on these issues at the hearing and in the written comments that were filed in this docket. ALLTEL is one of the largest telecommunications companies in the country. Based upon the evidence we have obtained, we do not have any reason to question the company's technical, managerial, and financial fitness to operate a telecommunication company in our state.

That leaves the public interest as the sole remaining measure by which this Commission would review the merger. We are concerned about some of the things that may occur as a result of the merger. However, in our investigation we did not discover anything that would have caused this Commission to deny the merger at this time.

As stated above, Aliant has been a good corporate citizen in Nebraska. The company has historically provided quality telecommunications services in Lincoln and in southeast Nebraska's rural exchanges. At the hearing, the representatives of both ALLTEL and Aliant stated that ALLTEL would continue to honor Aliant's contracts and other obligations for the term of such commitments. While we are concerned about what will happen after the life of those commitments expires, that concern would not be a ground upon which to deny the merger.

After the merger, certain jobs will be eliminated. While this concerns the Commission, a company's employment decisions are outside of the scope of the Commission's regulatory role and authority. If reductions in the surviving company's work force causes service quality to decline, the Commission would have the authority to intervene regarding the service quality issue. However, at this stage, these types of concerns are insufficient grounds upon which to declare the merger to be impermissibly outside of the public interest. It is not the role of a government body to micro-manage the affairs of business.

An additional concern raised by Commissioner Boyle involves the request by the companies at the Federal Communications Commission (FCC) to permit Aliant to convert from price-cap regulation to rate-of-return regulation. Commissioner Boyle's concern is that to allow Aliant to re-enter rate-of-return regulation would be inconsistent with the strides that this Commission has taken to implement the Telecommunications Act of 1996 and would be a huge step backwards. However, the ability to address that concern rests solely with the FCC and not with the Nebraska Commission.

Through this merger, ALLTEL is assuming certain responsibilities within the state. If after the merger, service quality drops, we find that the company is violating provisions of the Telecommunications Act, or we find that ALLTEL is acting to impede competition, we will take the appropriate actions to ensure that ALLTEL lives up to its obligations.

2. Performance Standards

Aliant has a record of providing high-quality telecommunications services. We fully expect ALLTEL to maintain high standards like those that Aliant customers currently enjoy. Mr. Thompson testified about actions taken by other state Commissions and the standards that those Commissions have set for acquiring companies. The amount of authority held by each state Commission varies from state to state. While other state Commissions may have the authority to order acquiring companies to maintain certain employment levels, this Commission does not. In our rules we do have, however, performance standards that companies are expected to maintain. ALLTEL will be required to meet those standards. At the hearing, we required Aliant to file documents reflecting its performance with respect to our standards. If after the merger there is any indication that the surviving company's performance has declined, the Commission will use this data to compare surviving company's service with that provided prior to the merger.

3. Employees

The Commission is concerned about the families of those Aliant employees who will lose their jobs as a result of the merger. Mr. Thompson cited examples of other states requiring companies to hire more employees. However, as we stated above, this Commission does not have authority over the employment decisions of companies. The ability of a state agency to directly regulate the employment decisions of a company would be a significant policy decision that would have to be expressly made by the Legislature. The Legislature has not given this Commission that type of broad authority.

However, the Commission does have an indirect influence on employment decisions of common carriers through our oversight of the carrier's service quality. If ALLTEL reduces the number of employees dedicated to Aliant's service area, and such reductions result in a degradation of service quality, we will require ALLTEL to take the steps that are necessary to meet the Commission's standards. However, although we can speculate what might happen to Aliant's service quality after the merger, we cannot take corrective actions until the merger has taken place and we have determined that service has actually declined. These guesses in and of themselves are insufficient grounds for this Commission to, in the words of Mr. Bleich, "flex its authority."

MADE AND ENTERED at Lincoln, Nebraska, this 8th day of June, 1999.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive