

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| AT&T Communications of the |) | Formal Complaint No. 1259 |
| Midwest, Inc., |) | |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | COMPLAINT DISMISSED |
| |) | |
| US West Communications, Inc., |) | |
| GTE Midwest Incorporated, and |) | |
| Aliant Communications Co., |) | |
| |) | |
| Respondents. |) | Entered: September 15, 1997 |

APPEARANCES:

For AT&T Communications of the
Midwest, Inc.:
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and
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For GTE Midwest Incorporated
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Wentzville, MO 63385
and

For US West Communications, Inc.:
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Omaha, Nebraska 68102

For Aliant Communications Co.
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Woods & Aitken
Suite 1500, 206 South 13th St.
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For MCI Telecommunications
Corporation
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BY THE COMMISSION:

By Formal Complaint filed May 16, 1997, AT&T Communications of the Midwest, Inc. (AT&T) initiated this complaint proceeding seeking a reduction in rates for intrastate access services provided by US West Communications, Inc. (US West), GTE Midwest Incorporated (GTE) and Aliant Communications Co. (Aliant). AT&T asserted such access service rates violated Neb.Rev.Stat. sec. 75-126 (Reissue 1996) and Sections 252, 253 and 254 of the Telecommunications Act of 1996 (the "Act"). AT&T requested that the Commission order that the access service rates of US West, GTE and Aliant be reduced to economic cost not to exceed costs developed in the "Hatfield Model", that the Carrier Common Line Charge be eliminated, that US West be prohibited from entering the interLATA long distance market until such access service rates are reduced and that GTE and Aliant be required to promptly reduce access service rates to cost.

On June 6, 1997, GTE filed its Motion to Dismiss the Formal Complaint. Similarly, on June 9, 1997, US West filed its Motion to Dismiss the Formal Complaint. On June 23, 1997, Aliant filed its Motion to Dismiss the Formal Complaint and Alternative Motion to Stay. Essentially, the Motions to Dismiss assert that Section 75-126 does not provide the Commission with a basis to grant the relief requested by AT&T in the Formal Complaint, and that Sections 252, 253 and 254 of the Act either are inapplicable to access service charges or do not require that access service charges be based upon forward-looking economic costs.

Neb. Admin. R. & Regs. tit. 291, ch. 1 sec. 005.08 states: "The Commission shall have the discretion, upon proper showing, to dismiss the formal complaint or require further action." Each of the Respondents have filed a Motion to Dismiss.

Oral arguments concerning the Motions to Dismiss were presented to the Commission by legal counsel for the parties on July 28, 1997. Thereafter, written briefs were submitted by the parties on August 15, 1997. The Motions to Dismiss are now before the Commission for ruling. For the reasons set forth below, the Commission finds that each of the Motions to Dismiss shall be sustained, and that the Formal Complaint shall be dismissed.

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Neb.Rev.Stat. sec. 75-126 prohibits unjust discrimination and practices by common carriers operating under this Commission's jurisdiction. A review of AT&T's Formal Complaint reveals that it does not contain allegations that AT&T was subjected to greater charges than other interexchange carriers to which the Respondents charge access, nor that AT&T was charged for access services other than in accordance with Respondents' rate lists on file with the Commission. Rather, the Formal Complaint, both in its title and in its contents, seeks reform of access charges. While section 75-126 does prohibit certain practices as described therein, such section is not an appropriate means to invoke the Commission's jurisdiction to reach a policy determination regarding the structure of intrastate access charges.

Further, we conclude that Neb.Rev.Stat. sec. 75-609(2) is specific legislation which provides the Commission with a jurisdictional basis and procedures to set access charges by a local exchange carrier to an interexchange carrier for access to its local exchange network. Such review can only take place following negotiations between such carriers. The Formal Complaint contains no allegation that AT&T negotiated access charges with any of the Respondents prior to initiating such Complaint. Section 75-609(2) provides the jurisdictional basis for resolution of access charge disputes between carriers. AT&T chose not to base its Formal Complaint on this statute.

AT&T also asserts in its Formal Complaint that Section 252 of the Act requires the Respondents set intrastate access charge rates which do not exceed forward-looking economic costs. However, the language of Section 252(d)(1), the FCC's interpretation thereof and the Eighth Circuit Court of Appeals recent decisions concerning the Act all weigh against AT&T's assertion. Section 252(d)(1) is not applicable to exchange access services. The FCC, in CC Docket No. 96-98, 11 FCC Rcd 15499, para. 176 and 358 (Aug. 8, 1996), concluded that "interconnection" and "unbundled network elements" as such terms are used in Section 252(d)(1) do not include exchange access services. This conclusion was confirmed in Iowa Utilities Board v. F.C.C., No. 96-3321, 97 WL 403401, f/n 20 (8th Cir. 1997).

In summary, this Commission finds that the Formal Complaint does not state a claim for which the Commission may grant relief pursuant to Neb.Rev.Stat. sec. 75-126, nor does the Formal Complaint state a claim pursuant to Sections 252, 253 or 254 of the Act requiring that intrastate access charges be reduced to forward-looking economic costs.

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ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Formal Complaint FC-1259 filed by AT&T Communications of the Midwest, Inc. be, and it is hereby dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of September, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

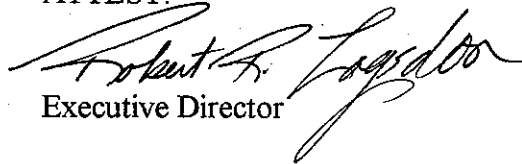


//s//Rod Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller

Chairman



ATTEST:



Executive Director