BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the application of GTE Sprint Communications Corporation, Washington, D.C. for a Certificate of Public Convenience and Necessity to Offer Intercity Telecommunications Services to the Public in the State of Nebraska.	Application No. C-497 GRANTED AS AMENDED
In the matter of the application of MCI Telecommunications Corporation, Washington, D.C. for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services and Request for Streamlined Regulation.	Application No. C-552 GRANTED AS AMENDED Entered: August 5, 1985

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OPINION AND FINDINGS

BY THE COMMISSION:

By its application filed February 29, 1984 GTE Sprint Communications Corporation (GTE Sprint), Washington, D.C. seeks a Certificate of Public Convenience and Necessity authorizing it to provide telephone service in the State of Nebraska.

By its application filed October 22, 1984 MCI Telecommunications Corporation (MCI), Washington, D.C. seeks a Certificate of Public Convenience and Necessity authorizing it to provide telephone service in the State of Nebraska.

Notice of the filing of the application of GTE Sprint was published on March 5, 1984 and of the application of MCI on October 30, 1984 pursuant to the provisions of the Commission's Rules and Regulations.

On February 15, 1985 GTE Sprint and MCI amended their applications to seek authority to provide intrastate interLATA long distance service only.

Protests to the granting of GTE Sprint's application were filed by The Lincoln Telephone and Telegraph Company (LT&T), Northwestern Bell Telephone Company (NW Bell), General Telephone Company of the Midwest, United Telephone Company of the West, Blair Telephone Company, Hamilton Telephone Company, Wauneta Telephone Company, Benkelman Telephone Company, Curtis Telephone Company, Keystone-Arthur Telephone Company, Dalton Telephone Company, Great Plains Communications, Inc., Nebraska Telephone Association, and Consolidated Telephone Company. LT&T also protested the granting of MCI's application. AT&T Communications of the Midwest, Inc. (AT&T Communications) was determined by the Commission to be an intervenor in both applications. Amended protests to both applications were filed by LT&T.

Pursuant to notice required by law, public hearing was held on the amended applications on a combined record, on March 6 and 7, 1985 in the Commission Hearing Room, Lincoln, Nebraska with appearances as shown.

Upon consideration of the amended applications, the evidence presented at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Applicant MCI is a Delaware corporation with its principal place of business at Washington, D.C. Applicant GTE Sprint is a Delaware corporation with its principal place of business in Burlingame, California. Both applicants are nationwide carriers of intercity telephone services under authority granted by the Federal Communications Commission.

2. Both of these applications, as amended, seek (a) the issuance of Certificates of Public Convenience and Necessity, (b) the approval of tariffs and (c) relaxed regulation as non-dominant carriers.

3. The State of Nebraska has been divided into three Local Access and Transport Areas (LATAs) pursuant to the terms of the Modified Final Judgement (MFJ) entered in United States v. American Telephone & Telegraph Company, 552 F.Supp. 131 D.C.C. (1982), aff'd sub nom. California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph, 569 F.Supp. 990 D.C.C. (1983), aff'd sub nom. California v. United States, 104 S.Ct. 542 (1983). Under the terms of the MFJ, AT&T Communications is allowed to provide telecommunications services between LATAs, while the Bell Operating Companies such as Northwestern Bell are restricted to providing services only within such LATAs.

4. Another result of the MFJ was that the Division of Revenue Procedure for toll revenues was rendered obsolete. In its place a system of Access Charges has been established.

5. Protestant LT&T has moved that the applications be dismissed. For reasons hereinafter set forth, and as a result of LT&T's withdrawal of its protests, such motion is hereby overruled.

6. On July 16, 1985, LT&T petitioned this Commission for leave to withdraw its protests of these applications. Such leave was granted by the Commission on July 23, 1985. In light of such withdrawal of protests, the application of MCI is unopposed since AT&T Communications is an intervenor only. Further, although protests of GTE Sprint's application remain on file, none of such protestants introduced evidence at the hearing or submitted briefs. Again, AT&T Communications appeared as an intervenor in the application fo GTE Sprint.

7. Three witnesses were called by each applicant in addition to Dr. Nina Cornell who testified for both applicants. Witnesses for both GTE Sprint and MCI described the interstate service presently provided in Nebraska and the services proposed. Originating service is presently available from Omaha and Lincoln with terminating service throughout the state. (T-23, T-216). With MCI"s Calling Card service, calls may be originated from any point in Nebraska. (T-303).

8. The Commission is governed by the provisions of Section 75-604, Revised Statutes of Neb. in the granting of Certificates of Public Convenience and Necessity:

> 75-604. Telephone lines; construction; extension into territory served by another telephone company; certificate of convenience and necessity; application; notice; hearing; findings required. No person, firm, partnership, corporation, cooperative, or association shall offer telephone service or shall construct a new telephone line in or extend an existing telephone line into the territory of another telephone company without first making an application for and receiving from the commission a certificate of convenience and necessity, after due notice and hearing under the rules and regulations of the commission. Before granting a certificate of convenience and necessity, the commission must find that (1) the territory in which the applicant proposes to offer telephone service is not receiving reasonably adequate telephone service, (2) that the portion of the territory of another telephone company in which or into which the applicant proposes to construct new lines or extend its existing lines is not and will not within a reasonable time receive reasonably adequate telephone service from the telephone company already serving the territory, or (3) the application is agreeable to the subscriber or subscribers and to both telephone 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 telephone service.

9. While this statute, by its language, refers to local exchange service, in Northwestern Bell Telephone Co. v. Consolidated Telephone Co., 180 Neb 268, 142 N.W. 2d 324 (1966) the Nebraska Supreme Court held that long distance service was also subject to its provisions.

10. The statutory language requires that the Commission make finding (1) or finding (2) or finding (3). Thus, if any one of the conditions is met, the other findings are not required.

11. In its petitions to intervene in both applications, AT&T Communications, the only certified interLATA carrier, has agreed to the applications with the following language: "Intervenor supports fair and equal competition for telecommunication services in the State of Nebraska." (C-497); "AT&T Communications supports and favors fair and equal competition for all interexchange carriers and services in the State of Nebraska." (C-552)

12. While no public witnesses testified either for or against these applications, testimony in this hearing and others (notably docket C-506) leaves little doubt that subscribers are using the services of these applicants for both interstate and intrastate calls.

13. The facilities of these applicants now in place in Nebraska are providing interstate service. (T-23, T-273). Neither applicant proposes to construct facilities to be used only for intrastate service, thus no existing facilities will be duplicated as a result of the granting of these applications. The Commission is, however, mindful that it continues to be the policy of this State under §75-604(3) that duplication of facilities is to be avoided. Therefore, the Staff shall prepare for Commission consideration a proposed rule to establish procedures for Commission evaluation and review of proposed future facility construction by carriers for the purpose of providing intrastate interLATA telecommunications services.

14. Dr. Nina Cornell testified that competition was in the public interest in that the benefits of competitive markets include being more responsive to customers, greater efficiency in providing service and technological change. She further alluded to the terminal equipment market as an example of both innovation and price reduction. Dr. John Felton testified that competition was in the public interest and that competition in a market can provide the public with a number of benefits including the production of goods and services at the lowest possible price, the introduction of innovation and increased options available to the public. (T-547) Robert Swezey testified that it was in the public interest to give customers a choice. Choice will stimulate toll traffic and will lead to innovation in new services, new technologies and new uses of telecommunications. (T-252-256)

15. Having considered all of the evidence, we find that the applications are agreeable to the subscribers and to the telephone companies involved, will not create a duplication of facilities and are in the public interest and the interest of the parties requiring service.

16. As a part of their applications, GTE Sprint and MCI have requested "streamlined regulation" or "non-dominant carrier" treatment. The tariff proposed by GTE Sprint contains a range of rates which may be varied by the company on one day's notice to subscribers, along with an attachment setting forth the currently effective rates. MCI's proposed tariff contains specific rates but it asks permission to revise rates upon filing same with the Commission and fourteen day's notice.

17. Any certificated telecommunications common carrier furnishing interLATA service within this State (which includes AT&T Communications) shall be allowed to file with this Commission for its approval tariffs containing a range of rates and charges for intrastate interLATA services furnished to Nebraska subscribers. The rates and charges may be varied by the company on one day's notice to the Commission. The filed tariff of GTE Sprint should be approved as modified herein, and the filed tariff of MCI should also be approved as to the rates but the request for permission to revise rates upon filing the same with the Commission and fourteen day's notice is denied.

18. While evidence was presented by applicants of differences between themselves and AT&T Communications, we are not convinced that a dominant/non-dominant form of regulation is appropriate as a general rule. Different regulation between competing carriers will be considered on a case by case basis and only where required by the public interest.

19. Both applicants have requested that they be exempted from the Uniform System of Accounts for Telephone Companies. Since this Commission has adopted the FCC Uniform System of Accounts for Class A and B Telephone Companies and its own Uniform System of Accounts for Class C and D Telephone Companies, and further since the FCC has not required these carriers to adopt the Uniform System of Accounts, it is appropriate to allow these companies to follow the same accounting methods as required by the FCC.

20. Both applicants should be required to file an annual report with this Commission consisting of a copy of any report filed with the FCC, a copy of the annual report to stockholders, and for Nebraska, on a combined interstate-intrastate basis, the investment in telephone plant located within the state, accumulated depreciation thereon, operating revenues, operating expenses and taxes.

21. Intervenor and protestants suggest that applicants should be required to pay access charges at the same level as AT&T Communications. This Commission has approved tariffs of the exchange carriers for access service which contain differentials for Feature Groups A and B versus Feature Groups C and D. After examining the evidence, the Commission finds a discount for Feature Groups A & B is appropriate. We find that the appropriate discount for intrastate interLATA access charges is 25%.

22. A final matter to be considered is that of unauthorized intraLATA calls. It has been suggested that applicants block intraLATA calls or compensate the exchange carriers for lost intraLATA revenue. Applicants' testimony indicates that attempts to block intraLATA calls would also block interLATA or interstate calls since their switches cannot identify the true point of origin of a call. For example, a call received by their system in Omaha and terminated in Norfolk may have actually originated in Des Moines, Iowa. With equal access (Feature Group D) no intraLATA calls would reach the interLATA carriers since such calls would be diverted by the local exchange carrier's facilities.

23. We recognize that unlawful intraLATA calls may be carried by interLATA carriers. These carriers should be required to compensate the local exchange

company for revenues lost, if any, as a result of interLATA carriers handling such intraLATA traffic, or in the alternative to block such calls. For billing purposes it will be assumed that calls entering and exiting an interLATA carrier's network entirely within a LATA are intraLATA calls for which the local exchange carrier is entitled to be compensated.

24. In order to compensate the local exchange companies for any revenues lost, interLATA carriers shall be required to file with the Commission reports on a monthly basis showing the number of messages carried by each interLATA carrier solely within a LATA in this state. Such monthly reports shall be filed with the Commission within sixty days from the last day of each month. Each interLATA carrier shall then compensate Northwestern Bell and LT&T for intraLATA messages carried during a month by paying to Northwestern Bell and LT&T for each such message carried the respective company's average intraLATA toll revenue per message for that month, less applicable access charges incurred. AT&T Communications is included as an interLATA carrier in the foregoing discussion.

25. As modified herein, the applications are fair and reasonable, are in the public interest and should be granted as amended.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that application Nos. C-497 and C-552 be and they are hereby granted as amended and GTE Sprint Communications Corporation and MCI Telecommunications Corporation be and they are hereby authorized to provide interstate interLATA communications service in the State of Nebraska.

IT IS FURTHER ORDERED that this order be and it is hereby made the Commission's Official Certificate of Convenience and Necessity to applicants to provide interLATA communications service in the State of Nebraska.

IT IS FURTHER ORDERED that the tariff of GTE Sprint be and it is hereby approved as modified herein; the tariff of MCI be and it is hereby approved as to the rates set forth in their Application but the request for permission to revise rates upon filing the same with the Commission and fourteen day's notice is denied.

IT IS FURTHER ORDERED that applicants shall file in accordance with the applicable statutes an annual report with this Commission consisting of (1) a copy of any report filed with the Federal Communications Commission, (2) the annual report to stockholders and (3) for the State of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses and taxes.

IT IS FURTHER ORDERED that the access tariffs of Nebraska exchange carriers are to be amended to provide a 25% discount for intrastate interLATA access charges as set forth in the Opinion and Findings herein.

IT IS FURTHER ORDERED that the Commission Staff prepare a proposed rule to establish procedures for review of proposed future facility construction by carriers for the purpose of providing intrastate interLATA telecommunications services.

MADE AND ENTERED at Lincoln, Nebraska this 5th day of August, 1985.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Harold D. Simpson
Chairman

ATTEST:

Donald Adams
Executive Secretary

COMMISSIONERS DISSENTING:

DISSENTING OPINION OF COMMISSIONERS BRAYTON AND GAY:

We must dissent from the majority opinion in applications C-497 and C-552. We do not believe that applicants have presented adequate evidence to show that competitive interLATA long distance service will be of benefit to Nebraska telephone subscribers and particularly those whom were present in the Third and Fifth Commission Districts. Neither applicant could specify when it proposed to offer service at any exchange in the Third and Fifth Districts. Thus, the granting of these applications will not result in true competition since alternative services will be available only to a minority of Nebraska subscribers.

In addition, we believe that competitive interLATA service must end in intraLATA service and will inevitably lead to toll rate deaveraging thus increasing costs for the subscribers we represent without offering any alternative.

We are well aware of all of the current arguments concerning the presence and further enhancement of competition within the telephone industry, but that so-called competition is only for the big accounts and large concentrations of telephone users. Unless the applicants are willing to offer their competitive services to all Nebraskans, there will be no benefit to the majority of the population of this state which is sparsely scattered outside of Omaha and Lincoln. To these people the applicant's so-called competition is a misnomer.

Bob Brayton

COMMISSIONER BOB BRAYTON

Duane D. Gay

COMMISSIONER DUANE GAY