

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-) Application No. AD-189r
cation of Elkhorn Valley) GRANTED
Cooperative, Hooper, Nebraska) and
which seeks authority to con-) Application No. AD-157
nect an automatic dialing-) REVOKED
announcing device (ADAD).) Entered: May 26, 1992

BY THE COMMISSION

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

By application filed April 7, 1992, Elkhorn Valley Cooperative ("Elkhorn"), P.O. Box 466, Hooper,¹ Nebraska, 68031 seeks authority to connect and operate an ADAD.

Applicant proposes to connect an American Telemarketing Computers ETS-1500, an ADAD which Elkhorn was authorized to operate pursuant to a grant of authority in Application No. AD-157 (May 24, 1990). The ADAD was originally used for advertising purposes. A permit lapses after two years and must be renewed with a new application.² Applicant informed the Commission in its petition that the ADAD is no longer used for advertising. A written transcript of the type of messages transmitted was submitted. The applicant has moved that its application therefore be granted as a registration. In support of its motion, applicant states that calls are made only to members of the cooperative and then only if those members have specifically signed up with the applicant to receive such calls.

The messages the applicant intends to send the called parties and the methodology used by the applicant are not the sort of communications with which we believe the Legislature was concerned when it decided to regulate ADADs. The intent of the pertinent statutes is to place a brake on the use of ADADs in cold-calling blanket telemarketing. ADADs permit the provider to place a large volume of calls at a low cost (no salaries, no commissions for human operators). Therefore, regulating them to the extent provided in the statutes reduces (hopefully) the volume of providers and the calls they make to the public.

¹ This application is governed by Neb. Rev. Stats. §§87-307 and 87-308 to 87-312 (Reissues 1991 and 1988, respectively).

² Neb. Rev. Stat. §87-308 (Reissue 1988).

In this application, instead of making cold calls to the public at large, the applicant limits the calls to members of the cooperative who specifically seek to receive the calls. We think this is sufficient reason for leaning toward a registration as the appropriate method of licensure instead of a permit. Parenthetically, we are leery of entering the murky waters of regulating speech content; the issue of advertising speech versus non-advertising speech can be a dark and forbidding sea through which we must traverse to decide whether a permit (costing \$500) or merely a registration (with no fee) is required of the applicant. If avoidable, we will not do so and, in this case, the limitation of ADAD calls to the cooperative's own members, based on their request to receive the calls, is sufficient grounds for finding in favor of a registration.

Upon review, the Commission is of the opinion and finds the application complies with the applicable statutes and the rules and regulations of the Commission pertaining to the registration of ADADs which are not used for advertising purposes. The application should be granted. In addition, as part of this application, the permit previously issued in Application No. AD-157 should, for the sake of clarity in the Commission's record keeping, be revoked.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application AD-189r be, and it is hereby, granted and the Elkhorn Valley Cooperative, Hooper, Nebraska be, and it is hereby, authorized to connect an automatic dialing-announcing device as described in its application and in accordance with the applicable statutes and the rules and regulations of the Commission.

IT IS FURTHER ORDERED that the permit issued in Application No. AD-157 be, and it is hereby revoked. A copy of this order shall be placed in the AD-157 file and that file shall be closed.

IT IS FURTHER ORDERED that this order be, and it is hereby, made the applicant's official registration, a copy of which is to be retained by the applicant; the Commission shall retain the original order in its permanent records.

IT IS FURTHER ORDERED that, upon receipt of this order and prior to connecting the ADAD to any telephone line, the applicant shall notify the serving telephone company in writing of its intent to connect or operate such device and identify the line to which connection is proposed.

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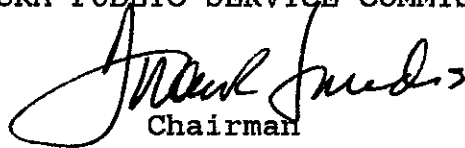
IT IS FURTHER ORDERED that the applicant shall notify the Commission of any changes in the information contained in the application within five (5) days of the change.

MADE AND ENTERED at Lincoln, Nebraska this 26th day of May, 1992.

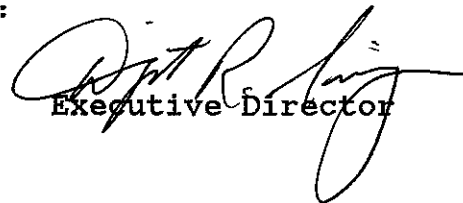
NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

//s//Duane D. Gay
//s//Frank E. Landis
//s//James F. Munnelly
//s//Daniel G. Urwiller


Chairman

ATTEST:


Executive Director