

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-)	Application No. AD-192r
cation of Nebraska Public)	
Employees, Local 251, Omaha,)	
Nebraska for authority to con-)	GRANTED
nect an automatic dialing-)	
announcing device (ADAD).)	Entered: November 5, 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 October 28, 1992, Nebraska Public Employees Local 251, 3000 Farnam, Suite 6 East, Omaha, Nebraska, 68131 seeks authority to connect and operate an ADAD.¹

Applicant proposes to connect a Faxtel 2000, an ADAD which Ed Cox was authorized to operate pursuant to a temporary grant of authority issued October 28, 1992. Applicant informed the Commission in its petition that the ADAD is not used for advertising. A written transcript of the type of messages transmitted was submitted. The applicant has moved that its application be granted as a registration. In support of its motion, applicant states that calls are made only to members of the union. Apparently no service or concept is being promoted for compensation.

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 and 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.

In this application, instead of making cold calls to the public at large, the applicant limits the calls to members of the union. 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

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

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 union's own members, is barely sufficient grounds for finding in favor of a registration.

In its application, the union requests exemption from the following requirements:

- a. To include on all calls made on the automatic dialing-announcing device, a statement of the nature of the call and the name, address and telephone number of the business or organization being represented; and
- b. As soon as the serving telephone company's central office equipment allows, disconnect the automatic dialing-announcing device from the telephone line upon the termination of the call by either the person calling or the person called; and
- c. To prevent such device from calling emergency telephone numbers of police or fire stations or medical or other facilities providing emergency service as designated by the Public Service Commission.

We find no showing in the application that such exemption is warranted. The request for exemption is denied and the applicant shall conform to those requirements set forth in its application.

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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application AD-192r be, and it is hereby, granted and the Nebraska Public Employees, Local 251, Omaha, 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 this order be, and it is hereby, made the applicant's official registration, a copy of which is

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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.

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 5th day of November, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Duane D. Gay

//s//James F. Munnelly
//s//Eric Rasmussen
//s//Daniel G. Urwiller

Daniel G. Urwiller

Vice Chairman

ATTEST:

[Signature]
Executive Director