

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-123
Neil W. Schilke and Byers Trust,)
Rural Route 5, Fremont, Nebraska,)
for authority to receive telephone) DENIED
service from the Fremont exchange)
of Northwestern Bell Telephone)
Company.) Entered: May 5, 1981

APPEARANCES: For the applicants
Neil W. Schilke, Attorney
505 North Main Street
Fremont, Nebraska

For the protestant,
The Lincoln Telephone and
Telegraph Company
Paul M. Schudel, Attorney
1500 Sharp Building
Lincoln, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By application filed February 19, 1981, Neil W. Schilke and Byers Trust, Fremont, Nebraska seek authority to receive telephone service from the Fremont exchange of Northwestern Bell Telephone Company.

A copy of the application was served upon Northwestern Bell Telephone Company and The Lincoln Telephone and Telegraph Company. A protest to the application was filed by The Lincoln Telephone and Telegraph Company.

Pursuant to notice required by law, public hearing was held on the application on March 30, 1981 at 9:30 a.m. in the Commission Hearing Room, Lincoln, Nebraska.

Upon consideration of the application, the evidence adduced at the hearing, briefs of the parties and being fully advised, the Commission is of the opinion and finds that:

1. Applicant Neil W. Schilke is an individual residing at Rural Route 5, Fremont, Nebraska. Applicant amended its application to substitute the name Malcolm S. Byers for the name Byers Trust.

2. Northwestern Bell Telephone Company is a common carrier providing telephone service at the Fremont exchange.

3. The Lincoln Telephone and Telegraph Company is a common carrier providing telephone service at the Cedar Bluffs exchange.

4. Mr. Schilke, his wife and daughter testified. He is an attorney with his office in Fremont, Nebraska. He and his family reside on property described as:

East one-half of the Southeast Quarter of Section 32,
Township 17 North, Range 8 East, Saunders County, Nebraska.

Mr. Schilke has lived at this location and has been a subscriber of the Cedar Bluffs exchange for approximately three years. Mr. Schilke, his wife and daughter all testified concerning problems they have had in making and receiving telephone calls. Virtually all of their business and social contacts are in Fremont. Almost no local calls are made. Although complaints about service have been registered with the operator, no trouble reports had been submitted to the company.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-123

Page two

5. Malcolm S. Byers owns unimproved farm land directly east of Mr. Schilke. The legal description of the Byers property is:

Southwest Quarter of Section 33, Township 17 North,
Range 8 East, Saunders County, Nebraska.

There is presently no telephone service at this location.

6. Protestant offered testimony by its Revenue Requirements Director and its Customer Services Manager concerning the service provided at the Cedar Bluffs exchange and the location of its facilities in the area near the applicants' locations. The Lincoln Telephone and Telegraph Company provides Cedar Bluffs service to a subscriber directly east of the locations of Mr. Schilke and Mr. Byers. Service tests performed by the company between December, 1980 and March, 1981 indicate that the service provided is within the Commission's service standards. Company records indicate four reports of trouble on Mr. Schilke's telephone since service was installed.

7. In deciding this Application, the applicable statute requires that we make several findings. Section 75-613 R.R.S. 1975 states that:

Upon the completion of the hearing on such an application, if a hearing is required, the Public Service Commission may grant the application, in whole or in part, if the evidence establishes all of the following:

(1) That such applicant or applicants are not receiving and will not within a reasonable time receive, reasonably adequate exchange telephone service from the company furnishing such service in the exchange service area in which the applicant or applicants reside or operate;

(2) The revision of the exchange service area or areas required to grant the application will not create a duplication of facilities, is economically sound and will not impair the capability of the telephone company or companies affected to serve the remaining subscribers in any affected exchange;

(3) The community of interest in the general territory is such that the public offering of each telephone company in its own exchange service area involved should include all the territory in its service area as revised by the Commission's order, and

(4) The applicant or applicants are willing and will be required to pay such construction and other costs and rates as are fair and equitable and will reimburse the affected company for any necessary loss of investment in existing property as determined by the Public Service Commission.

We believe the evidence adduced at the hearing does not establish all the foregoing requirements.

8. The evidence indicates that the granting of the application would create a duplication of facilities in that it would be impossible to extend Fremont service to the applicants without crossing or paralleling the existing line of The Lincoln Telephone and Telegraph Company which serves the subscriber located east of the applicants.

9. The application should be denied.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-123 be and it is hereby denied.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-123

Page three

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of May, 1981.

NEBRASKA PUBLIC SERVICE COMMISSION

Juane D. Gay
Chairman

ATTEST:

Tanda Cudde

Acting Secretary

COMMISSIONERS CONCURRING:

Jack Roman