

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application )	Application No. C-138
of Fred D. Hagerbaumer, Steve )	
Moseman, Robert Paeper and W. A. )	
Schurman, Route 1, Nickerson, )	DENIED
Nebraska, for authority to receive )	
telephone service from the Hooper )	
exchange of the Hooper Telephone )	
Company. )	Entered: September 28, 1981

APPEARANCES: For the protestant, Arlington  
Telephone Company  
John R. O'Hanlon, Attorney  
1569 Washington Street  
Blair, Nebraska

For the Hooper Telephone Company  
Paul M. Schudel, Attorney  
1500 Sharp Building  
Lincoln, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By application filed March 30, 1981, Fred D. Hagerbaumer, Steve Moseman, Robert Paeper and W. A. Schurman, Nickerson, Nebraska, seek authority to receive telephone service from the Hooper exchange of the Hooper Telephone Company.

Notice of the filing of the application was served upon the Hooper Telephone Company and the Arlington Telephone Company. A protest to the application was filed by Arlington Telephone Company.

Pursuant to notice as required by law, a public hearing was held on the application on July 22, 1981, at 9:30 a.m., in the Moller Center, Fremont, Nebraska, with appearances as set forth above.

Upon consideration of the application, protest, evidence adduced at the hearing and being fully advised in the premises the Commission is of the opinion and finds as follows:

1. Hooper Telephone Company is engaged in the telephone business as a common carrier under the jurisdiction of this Commission with an exchange at Hooper, Nebraska.

2. Arlington Telephone Company is engaged in the telephone business as a common carrier under the jurisdiction of this Commission with an exchange at Arlington, Nebraska.

3. That, in addition to the pleadings referred to hereinabove, Arlington Telephone Company has filed a Petition in Intervention which recites that a separate application, the same being filed as Application No. C-153 before this Commission, the object and purpose of which is to seek a final determination of the certificated exchange area of the Arlington Telephone Company within the area affected by this application. We find that the revision of the appropriate service area maps (certificated service areas) shall be in accordance with our ruling on Application No. C-153 and shall, therefore, not be a part of this order.

4. In deciding this Application, the applicable statute requires that we make several findings. Section 75-613 R.R.S. Neb. 1976 state that:

Upon completion of the hearing on such an application, if a hearing is required, the Nebraska 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 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 exchanges.

(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 Nebraska Public Service Commission.

5. Applicants are individuals who reside in a rural area of Washington County, Nebraska, which can be described as located North of the unincorporated community of Fontanelle, Nebraska. Applicant Hagerbaumer resides in the Northeast Quarter of Section 32; applicant Moseman resides in the Northwest Quarter of Section 32; applicant Paeper resides in the Southwest Quarter of Section 29, all of which are located in Township 19 North, Range 9, East of the 6th P.M. in Washington County, Nebraska. Applicant Schurman resides in the Northwest Quarter of Section 5, Township 18 North, Range 9, East of the 6th P.M., Washington County, Nebraska.

6. The area in which the applicants reside was variously referred to at the hearing as a "peninsula" or "finger" of the Arlington Telephone Company which extends into an area surrounded on three sides by areas serviced by the Hooper Telephone Company. The specific area is shown on Exhibits 6 and 7 which were introduced into evidence at the hearing referred to hereinabove.

7. That the evidence adduced at the hearing indicated that Arlington Telephone Company serves twelve subscribers within the "peninsula" or "finger" described hereinabove and that service has been provided to the locations of all of the applicants in excess of ten years by Arlington Telephone Company. This evidence was not challenged by the applicants or by Hooper Telephone Company. In addition, the uncontroverted evidence adduced at the hearing indicated that Hooper Telephone Company serves no subscribers within the "peninsula" or "finger" in question, although it does have a cable which crosses the area to serve a customer located to the West of the "peninsula" or "finger". It should be noted that there was no testimony at the hearing that the cable of Hooper Telephone Company which is located within the area involving this application would be of sufficient capacity to serve the applicants. Therefore, it must be assumed that new facilities would be required to serve the applicants. Reference is herewith made to Exhibit No. 8 which was introduced into evidence at the hearing and which contains a listing of the dates of service by Arlington Telephone Company to the applicants.

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8. Hooper Telephone Company appeared at the hearing and, as set forth hereinabove, was represented by Counsel. However, pursuant to this Commission's Rules and Regulations, it is not a party to this action by virtue of its failure to file a Petition in Intervention or other proper pleading.

9. Judicial notice is herewith taken that the service area maps filed by Arlington Telephone Company and Hooper Telephone Company contain areas that "overlap" and, in particular, the area which is involved in this application is shown on the maps submitted by both companies to be a part of their certificated territory.

10. Applicants Moseman, Paeper and Schurman did not appear at the hearing. Applicant Hagerbaumer did appear and testified that he would prefer service from Hooper Telephone Company because his primary business and social contacts are in Hooper, Nebraska, which results in a toll call charge if he remains a subscriber of the Arlington Telephone Company. In all, six witnesses testified in behalf of the applicants although all were not parties to this action. None of the witnesses testified that they would be willing to reimburse the Protestant for loss of investment as provided by statute and referred to in paragraph 4 hereinabove. Applicants' failure to do so, in and of itself, requires that this Commission deny the application pursuant to the applicable evidence requirement.

11. Arlington Telephone Company presented evidence that adduced the following:

A. It has provided exclusive service to the territory in question for a period exceeding ten (10) years.

B. That it has in place buried cable which services subscribers within the area, including the applicants.

C. That despite the fact that Arlington Telephone Company has plans underway to upgrade telephone service to the area involved in this application, substantial portions of the plant now in service would remain intact which results in the fact that a duplication of service would result if this application were to be granted.

D. That the number of main stations served by Arlington Telephone Company has decreased from 847 in 1978 to 838 as of December 31, 1980.

E. That in order for Hooper Telephone Company to serve the applicants, new facilities would have to be installed which would pass at least six (6) subscribers of Arlington Telephone Company who are not parties to this action and who have not indicated a desire to transfer their service from Arlington Telephone Company to Hooper Telephone Company.

F. That trouble reports indicate that service to applicants meets and, in fact, exceeds standards set by this Commission.

G. That according to testimony offered by the applicants toll charges to them would actually increase by virtue of the granting of this application.

H. That lost revenue, minus that portion paid to Northwestern Bell Telephone Company for its share of toll calls is shown in Exhibit 8 received in evidence at the hearing.

I. That loss of investment will result as shown in Exhibit 15 and modified by Exhibit 16 will occur if that application should be granted.

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12. That in light of the foregoing, this Commission has no choice but to deny this application for failure to meet the statutory requirements set forth in paragraph 4 hereinabove for the following reasons:

A. There is not sufficient proof that applicants are not receiving or will not within a reasonable time receive reasonably adequate service from Protestant.

B. There will clearly be a duplication of service if the application is granted.

C. In light of the fact that Arlington Telephone Company with its only exchange at Arlington, Nebraska, has a relatively small number of subscribers (which has declined in years) we cannot conclude that the granting of this application would not adversely effect the ability of Protestant to serve its remaining subscribers.

D. The evidence adduced at the hearing failed to satisfy the statutory requirement that applicants would be willing to reimburse the protestant for its necessary loss of investment.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission by reason of the foregoing findings, that Application No. C-138 be and herewith is denied and dismissed.

IT IS FURTHER ORDERED that Arlington Telephone Company and Hooper Telephone Company (although not a party to this action) shall file revised service area maps in accordance with this Commission's ruling on Application No. C-153 which is now pending before the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 28th day of September, 1981.

NEBRASKA PUBLIC SERVICE COMMISSION

*Jack Romans*  
Chairman

ATTEST:

COMMISSIONERS CONCURRING:

*Terrence L. Kubicek*  
Secretary