

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)	Application No. C-168
Mr. & Mrs. Duane Ochsner, Hastings,)	
Nebraska, for authority to receive)	
telephone service from the the)	GRANTED
Juniata exchange of the Lincoln)	
Telephone and Telegraph Company.)	Entered: May 17, 1982

APPEARANCES: For the applicant
William M. Connolly, Attorney
Box 315
Hastings, Nebraska

For the protestant, Glenwood Telephone
Membership Corporation
Charles Hastings, Attorney
Box 1004
Hastings, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By application filed July 22, 1981, Mr. & Mrs. Duane Ochsner, Hastings, Nebraska, seek authority to receive telephone service from the Juniata exchange of the Lincoln Telephone and Telegraph Company.

A copy of the application was served upon the Lincoln Telephone and Telegraph Company and Glenwood Telephone Membership Corporation. A protest to the application was filed by Glenwood Telephone Membership Corporation.

Pursuant to notice required by law, public hearing was held on the application on January 8, 1982, at 10:00 a.m. in the Adams County Court House, Hastings, Nebraska, with appearances as set forth above.

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

1. Applicants are husband and wife residing in the Northeast Quarter of Section 13, Range 6 North, Township 11 West, Adams County, Nebraska.
2. The Lincoln Telephone and Telegraph Company is a common carrier providing telephone service at the Juniata and Hastings exchanges.
3. The Glenwood Telephone Membership Corporation is a common carrier providing telephone service at the Roseland exchange.
4. Mr. Ochsner testified that he and his wife reside in a new house at the above location. They formerly lived about one mile west of there where they did subscribe to the Roseland exchange for 17 years. They do not have telephone service at their new home. Their church is in the Hastings area and their children attend school in the Hastings area. (Hastings and Juniata have extended area service) The vast majority of their business and social contacts are in the Juniata-Hastings area.
5. DeLoyd Larson, Customer Service Manager for the Lincoln Telephone and Telegraph Company testified that the applicants were located approximately 1 mile from its facilities and that if the application were granted construction charges would be approximately \$1,000.00 and service would be provided from the Hastings exchange. Mr. Ochsner indicated that he would be willing to pay the construction charge.

6. Protestant's witness, Mr. Roger Hoffman, Assistant Manager, testified concerning the location of the applicant in relation to the service area boundary and other Roseland subscribers, the investment and borrowings of the company to provide service, its revenues and projected revenues.

7. In deciding this application, the applicable statute requires that we make several findings. Section 75-613 R.R.S. 1943 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 Nebraska Public Service Commission.

We believe the evidence adduced at the hearing establishes the foregoing requirements and that this application should be granted.

8. Under the above quoted statute, the Commission is required to determine the adequacy of telephone service available to the Applicant. In view of our function as an administrative body, we give the broadest interpretation possible to the term "adequate service." In so doing, we follow the mandate of Furstenburg v. Omaha & C. B. Street R. Co., 132 Neb. 562 (1937) wherein the Nebraska Supreme Court said:

The facilities of administrative law with the combination of administrative, legislative, and judicial powers such as the public service commission have been developed by the people of this state and in the country generally for the purpose of providing direct, swiftly-moving, effective, nonpolitical protection of the public. The primary object of the regulation of public utilities by the public service commission is not to establish a monopoly or to guarantee the security of investment of public service corporations, but, first and at all times, to serve the interests of the public. Nothing is more injurious to the public from every standpoint than a law which is not capable of working out tangible results . . . at 569.

From a purely physical standpoint, the service of the Roseland exchange of the Glenwood Telephone Membership Corporation is unquestionably adequate. However, from the Applicants' standpoint, Roseland exchange service is inadequate since their community of interest is Hastings.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. C-168

Page three

9. There is no telephone line in the vicinity of the applicants, so that no duplication of facilities would be created by the granting of this application.

10. Since the applicant is not a subscriber we cannot conclude that the granting of this application will significantly affect the income of Glenwood, the ability to service its debt nor is it likely that future rate increases will be required if this application is granted. The application is economically sound and will not impair the capability of the telephone companies affected to serve the remaining subscribers in the affected exchanges.

11. 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 will include all the territory in its service area as revised by this order.

12. The record is not entirely clear as to what protestant claims its loss of investment to be; however, it is apparently represented by its average investment per station. The record is clear, however, that there is no telephone line serving the applicant and that no facility of the protestant would be rendered valueless by the granting of the application. We therefore find that there is no loss of investment to the protestant. Applicant has indicated his willingness to pay construction charges to the Lincoln Telephone and Telegraph Company.

13. The application is fair and reasonable, is in the public interest and should be granted.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-168 be and it is hereby granted and Mr. & Mrs. Duane Ochsner be and they are hereby authorized to receive telephone service from the Hastings exchange of the Lincoln Telephone and Telegraph Company.

IT IS FURTHER ORDERED that the Lincoln Telephone and Telegraph Company and Glenwood Telephone Membership Corporation file appropriate revised service area maps with the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 17th day of May, 1982.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold D. Simpson
Chairman

ATTEST:

COMMISSIONERS CONCURRING:

Terence L. Kuback
Secretary