

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the application of	)	Application No. C-335
United Telephone Company of the West	)	
Scottsbluff, Nebraska, for authority	)	GRANTED IN PART
to increase its rates and charges.	)	
	)	Entered: March 19, 1985

APPEARANCES: For the applicant  
J. Richard Smith, attorney  
6666 West 110th Street  
Overland Park, Kansas 66211

For the protestants, Tracy Corporation  
and Michael J. Tracy  
John Herdzina, attorney  
1175 Woodmen Tower  
Omaha, Nebraska 68102

For the protestant, City of Kimball  
Darrel J. Huenergardt, attorney  
P.O. Box 490  
Kimball, Nebraska 69145

For the Commission Staff  
John Boehm, Attorney  
Capitol Building  
Lincoln, Nebraska 68509

OPINION AND FINDING

BY THE COMMISSION:

By its application filed December 27, 1982, United Telephone Company of the West, Scottsbluff, Nebraska applied for authority to increase its rates and charges. By order entered August 23, 1983 the Commission ordered United to file a revised schedule of rates and charges designed to produce additional annual revenue of \$650,149. United filed such a schedule and it was approved by order of the Commission on September 6, 1983. United implemented said rates on September 7, 1983 and they are currently in effect.

Protestants Tracy Corporation II, Michael J. Tracy and the City of Kimball filed motions for rehearing and reconsideration which were overruled by the Commission on October 25, 1983. Said protestants appealed the September 6 order to the Nebraska Supreme Court which found that the meeting of the Commission on September 6 had been improperly held in that statutory notice requirements had not been fully met and returned the matter to the Commission for rehearing.

United filed a motion asking the Commission to set a time for rehearing and to approve its schedule of rates and tariffs and a motion seeking a declaratory ruling on the question of whether or not any refunds were due in this matter.

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Pursuant to notice required by law, rehearing was held in the Commission Hearing Room, Lincoln, Nebraska on January 29, 1985.

1. At the outset of the rehearing, United withdrew all of its pending motions.

2. United contended that two questions needed to be decided at the rehearing:

(1) Whether or not United's schedule of rates and charges which was filed in compliance with the Commission's August 23 Order does in fact comply with said order and;

(2) Whether or not any refunds are due to customers of United for any reason.

3. Protestants Tracy Corporation II and Michael J. Tracy contended that the question of whether or not United's schedule of rates and charges complies with the August 23 Order is before the Commission but argue that the question of refunds is not within the jurisdiction of the Commission, having been raised in a separate proceeding in Scottsbluff County.

4. Protestant the City of Kimball contended that a notice to the public was required and that this hearing should have been in Scottsbluff or Kimball so the public could participate and objected to the entire proceedings.

5. We find that, since the meeting of September 5, 1983 was held without proper statutory notice, the order entered therein is void and United's schedule of rates and charges is still pending for our approval. We find no requirement either in law or our rules that would require further public hearings in this matter. We therefore find the contentions of the City of Kimball to be without merit and its objections to these proceedings are hereby overruled.

6. We find that the issues to be decided at this rehearing are as follows:

(1) Whether or not the schedule of rates and charges filed by United and which were placed into effect on September 7, 1983 are in compliance with our August 23, 1983 Order or not and;

(2) Whether or not any refunds are due to customers of United for any reason.

We will discuss these two issues in order.

7. Did the schedule of rates and charges filed by United herein comply with our order of August 23? The operable portions of our order appear on page 4 thereof and are as follows:

"21. Since the revenue increase authorized herein is less than that proposed, applicant shall be required to submit new rate schedules in accordance with the following:

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22. Protestant, Tracy Corporation II, challenged the rates proposed for one-way paging service as being too low. Applicant presented cost studies for pager rental and service using incremental cost methods which supported its proposed rates. These cost studies used historical costs and ignored cost changes which occurred after the test year. Pager rental and service rates should be set at a level higher than proposed by applicant.

23. Applicant proposed increases in rates for terminal equipment including the primary telephone. The Commission has ordered that the rate for the primary telephone shall be \$ .50 per month for all telephone companies. This Commission will not make exceptions to this order and applicant will not be authorized to increase the rate for the primary telephone.

24. Consistent with our recent decision is application No. C-266 of The Lincoln Telephone and Telegraph Company, coin telephone rates should be limited to 20 cents.

25. As modified above, the application is fair and reasonable, is in the public interest and should be granted in part and applicant should be ordered to file with the Commission for its approval a schedule of rates designed to produce additional annual revenue of \$650,149."

8. G. V. Head, testifying on behalf of United, identified the schedule of rates and tariffs that had been filed to comply with our August 23 order and stated that they were still on file and in effect. With respect to the one-way paging service rate, witness Head testified that the schedules raised the total cost of paging service from \$17.60 to \$18.00. He testified that United construed our order to mean that the pager rental and service rates, taken together, should be at a level higher than originally proposed. United's original proposal was for a \$2.60 service rate and a \$15.00 rental rate on pager equipment. The service rate was raised to \$3.00 and the pager rental rate remained at \$15.00. Mr. Head testified that United had searched the record to try and find the cost changes occurring after the end of the test year that we referred to in our August 23 order. He testified that the only such information in the record was a contract covering the installation and repair of mobile telephone units, not paging units. He testified that United construed the order as being in factual error on that point. He further testified that the mobile rates had been raised in order to take into account the evidence referred to. He demonstrated that the rate for the primary telephone was fifty cents per month, the coin telephone rate was twenty cents and that the entire schedule of rates and charges would raise the required \$650,149.

9. United's interpretation of the language used in paragraph 22 of the order of August 23, 1983, approving the rate schedules was correct. The reference to cost changes occurring after the test year applied only to the contract concerning the installation and repair of mobile phone units and was incorrectly placed in the paragraph referring to pager rates. The use of the cost studies and historical costs was otherwise appropriate to support the proposed pager rates.

10. Protestant Tracy presented Roger Anderson, an employee of United who was familiar with the study upon which the paging rates were based. He stated that the study identified all the costs incurred by the Company in providing pager service to the public and that the rate charged therefore was sufficient to return all those costs, including a rate of return and make a substantial contribution to the company's general overheads. He stated that the cost study was based on test year information and that at the time the study was made the Company was making substantial profit on each pager that was in service. He stated that another cost study taken at another time using other information might show a different result but that he had made no such studies. He stated that without performing such a cost study the Company had no way of knowing if its paging service would be profitable or not. This is because some of the facilities used to render paging service are also used to render other telephone services offered by the company and their costs must be apportioned between paging and other services.

11. Protestant Tracy challenged United's cost study, advocating the use of information that was not placed in the record during the evidentiary hearing, that has become available not only after the test year was concluded but after the time the rates and schedules were filed and even as late as 1984. It is appropriate rate making philosophy to only consider facts occurring during the test year in determining the appropriate level of rates. The recognized exception to this rule is that we will consider facts that occur after the end of the test year if it is known at the time of the hearing that such fact will occur and that its effect on the rate schedules is measurable. Thus we find that United's paging rate was based on a valid cost study which includes all the direct costs attributable to that service, including a rate of return, and the rate established based thereon is sufficient to provide a substantial contribution to the company's general overheads.

12. After considering all the evidence, we find that the schedule of rates filed by United pursuant to our Order of August 23, 1983 and implemented by it on September 7, 1983 do substantially comply with the intent of that Order and should be approved.

13. Is there a refund due to United's customers for any reason? United placed its current rates into effect on September 7, 1983. United had filed for an increase of \$2,227,330. The schedule that was placed into effect raised \$650,149, 29% of the total. Pursuant to Nebraska law, United was entitled to place rates into effect that would raise up to 75% of the total amount applied for 6 months and 30 days after the date of its application, August 26, 1983, if the Commission had not approved its filing by then. We find that United had the authority under Nebraska statutes to implement the rates it did implement on September 7 and thus, no refund would be due unless we find as a result of this rehearing that such rates did not comply with our August 23 order. Protestant Tracy argues that we have lost jurisdiction to decide this question because of litigation he instigated in Scottsbluff. We reject that argument and state that we have full jurisdiction to decide all questions concerning this particular application until such time as an appeal is taken from the Public Service Commission's order on the matter.

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14. We note that this case has been on appeal to the Nebraska Supreme Court and are cognizant that Protestants contest the appropriateness of United's appeal bond. We do not decide that question here, since it could have been raised to the Supreme Court and decided there, it cannot now be before us. Besides, in the unique circumstances of this case, United's absolute right to place 75% of its application into effect would supersede any obligation to post an appeal bond.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Schedule of Rates and Charges filed by United in compliance with our Order of August 23, 1983 be and are hereby approved.

MADE AND ENTERED in Lincoln, Nebraska, this 19th day of March, 1985.

NEBRASKA PUBLIC SERVICE COMMISSION

*Harold D. Simpson*  
Chairman

ATTEST:

COMMISSIONERS CONCURRING:

*Donald Adams*  
Executive Secretary