

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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|---------------------------------------|---|--------------------------|
| In the Matter of the Application of |) | Application No. C-643 |
| Ash Grove Cement Company, Copple |) | |
| Chevrolet-GMC, Inc., Errol Meisinger, |) | DISMISSED |
| d/b/a Louisville Ready Mix and Herman |) | |
| Bros., Inc., for a Certificate of |) | |
| Public Convenience and Necessity. |) | Entered: October 7, 1986 |

APPEARANCES:

Paul M. Schudel of
Woods, Aitken, Smith, Greer,
Overcash, & Spangler
1500 American Charter Center
206 South 13th Street
Lincoln, Nebraska 68508

Jack L. Shultz of
Nelson & Harding
P.O. Box 82028
Lincoln, Nebraska 68501

BY THE COMMISSION:

By their application filed March 7, 1986, Ash Grove Cement Company, Copple Chevrolet-GMC, Inc., Errol Meisinger d/b/a Louisville Ready Mix and Herman Bros., Inc. seek a Certificate of Public Convenience and Necessity authorizing them to provide interLATA services between Louisville, Nebraska and the Omaha, Nebraska toll free calling area.

Notice of the filing of the application was published on March 14, 1986, pursuant to the provisions of the Commission's Rules and Regulations.

A Petition for Formal Intervention was filed on behalf of LT&T on April 14, 1986 and was granted by the Commission.

Pursuant to notice required by law, public hearing was held on June 9, 1986, in Louisville, Nebraska with appearances as shown.

Prior to the filing of this application, Herbert J. Sherdon, Director of the Communications Department, had filed a Formal Complaint with this Commission, FC-1201, concerning rates and billing practices for foreign exchange (FX) service. The complaint alleges the rates established for FX service are excessive and will cause bypass.

OPINION AND FINDINGS

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. The applicants are three corporations and one individual with places of business located within the Louisville, Nebraska telephone exchange.

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2. The applicants have not and state that they will not offer for hire telephone service over the privately-owned cable facilities. Maintenance and installation costs of the facility will be assessed among the applicants on the basis of the number of lines each uses. As such there is no public use of the facilities and the applicants do not seek to operate as a common carrier furnishing communications services for hire.

3. Neb. Rev. Stat. § 75-109 (Reissue 1981) provides that this Commission possesses the power to regulate and exercise general control over all common carriers "furnishing communication services for hire in Nebraska intrastate commerce." The essential aspect of operating as a common carrier is provision of services to the general public for hire. See Francis R. Orshek Co. v. State, 174 Neb. 668, 119 N.W.2d 48 (1963) and see e.g. Neb. Rev. Stats. ¶ 75-302 (9) (Reissue 1981).

4. LT&T has moved for dismissal of Application C-643 for lack of jurisdiction. The Commission finds that there is no disputed issue of fact that the applicants do not intend to offer services for hire over the privately-owned facilities. Pursuant to § 75-109 the Commission has no jurisdiction under these circumstances to grant a certificate of public convenience and necessity pursuant to § 75-604.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that LT&T's Motion to Dismiss Application No. C-643 is granted, and that this Application is hereby dismissed.

MADE AND ENTERED in Lincoln, Nebraska this 7th day of October, 1986.

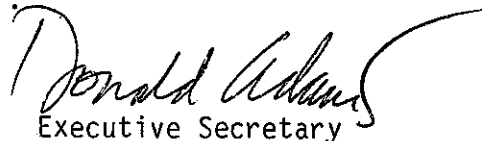
NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

COMMISSIONERS CONCURRING:

//s//Bob Brayton
//s//James F. Munnelly
//s//Eric Rasmussen
//s//Harold D. Simpson

ATTEST:


Executive Secretary

