

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. C-756  
of Telebeep, Inc., Norfolk, Nebr- )  
aska, for authority to receive ) DENIED  
telephone service from the Pierce )  
Telephone Company. ) Entered: August 23, 1988

APPEARANCES: For the applicant  
David A. Domina, Attorney  
P. O. Box 162  
Norfolk, Nebraska 68701

For the Protestant, Pierce Telephone  
Company, Inc.  
William E. Webster, Attorney  
P. O. Box 158  
Pierce, Nebraska 68767

OPINION AND FINDINGS

BY THE COMMISSION:

By application filed March 28, 1988, Telebeep, Inc., Norfolk, Nebraska seeks authority to receive telephone service from Pierce Telephone Company.

Copies of the application were served upon Pierce Telephone Company, Inc. and Plainview Telephone Company, Inc. Written protests to the application were received from both telephone companies.

Pursuant to notice required by law, public hearing was held on the application on June 29, 1988 at 10:30 a.m. in the Pierce County Court House, Pierce, Nebraska with appearances as shown. Briefs were subsequently filed by the parties at the request of the hearing examiner.

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 is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business at Norfolk, Nebraska. It is a radio common carrier providing two-way mobile radio and one-way paging service subject to the jurisdiction of the Federal Communications Commission.

2. Protestants are telephone companies under the jurisdiction of this Commission providing telephone service at Plainview and Pierce, Nebraska.

3. Chris Peterson testified for the applicant. He is president of Telebeep, Inc. Telebeep has established a base

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station at Foster, Nebraska to provide mobile and paging service. This location is within an area in which both Plainview Telephone Company and Pierce Telephone Company furnish telephone service. Mr. Peterson requested telephone service from both Pierce Telephone Company and Plainview Telephone Company in order to serve customers in both the Pierce and Plainview communities. Pierce Telephone Company was informed of the application to Plainview Telephone Company. Pierce Telephone Company denied the application and refused to install service for the applicant. Service from the Plainview exchange was installed for the applicant at its Foster location.

4. Applicant seeks by this application to obtain telephone service from Pierce Telephone Company in addition to the existing Plainview Telephone Company service at the same premise in Foster, Nebraska.

5. Section 75-613, R.S. Neb. 1982 sets forth the evidence which the Commission must find in order to grant this application including the following:

(2) The revision of the exchange service area or areas required to grant the application will not create a duplication of facilities, . . .

6. Herbert Sherdon, Director of Communications for the Commission testified that Commission rules required the filing of service area maps; that Exhibits 21 and 22 are copies of the maps filed by Pierce Telephone Company and Plainview Telephone Company respectively and reflect that the area in which the applicant is located is within the service area of both telephone companies; that it has been the Commission's long-standing policy that customers in such areas could obtain telephone service from the company of their choice but that the statutes prohibit a customer from receiving service from both telephone companies.

7. Applicant has presented evidence of Federal Communications Commission rulings which it argues require that Pierce Telephone Company furnish the service requested and that the FCC has preempted this Commission from exercising jurisdiction.

8. Donovan Koehler, Plant Engineer for Pierce Telephone Company testified that foreign exchange service is available to the applicant which will provide Pierce dial tone through toll private line facilities.

9. If the refusal of Pierce Telephone Company to provide local exchange telephone service to the applicant is in violation of the rules of the Federal Communications Commission then this Commission is without jurisdiction to grant relief. Since the applicant is located in an area served by both telephone

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companies it should have the right to choose to receive telephone service from either company. Applicant has failed however to offer any evidence that service from both Plainview Telephone Company and Pierce Telephone Company would not be a duplication of facilities in violation of the statutes and the application should be denied.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that application No. C-756 be and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of August, 1988.

NEBRASKA PUBLIC SERVICE COMMISSION

*Daniel G. Urwiller*

Chairman

COMMISSIONERS CONCURRING:

*Quane D. Gay*

//s//James F. Munnelly  
//s//Eric Rasmussen  
//s//Harold D. Simpson  
//s//Daniel G. Urwiller

ATTEST:

*D. H. R. Harty*  
Executive Secretary