

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Application of) Application No. C-783
Cambridge Telephone Company,)
Cambridge, Nebraska for authority) Application Reconsidered
to revise rates and charges for) Granted in Part
Local Exchange Service for)
approval of Depreciation Rates.) Entered: May 1, 1990

Appearances: For the Applicant
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and

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For the Commission
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OPINION AND FINDINGS

BY THE COMMISSION:

By order entered January 16, 1990, the Commission granted in part the above captioned application and authorized applicant to increase its rates and charges for business one party service to \$13.50 and for residence one party service to \$9.65; approved an EAS adder of \$1.40 for business and \$1.00 for residence; and approved depreciation charges.

On January 29, 1990, applicant filed a Motion for Rehearing. Oral argument on said motion was held on March 6, 1990.

Upon further consideration of the application, the Motion for Rehearing, arguments of counsel and being fully advised, the Commission is of the opinion and finds that its order of January 16, 1990 should be reconsidered and modified as follows:

1. An additional increase of \$1.00 per month for business and residence subscribers will produce additional annual revenue of \$13,500 and will increase the rate of return to 9.2% which is fair and reasonable.

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ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the original order entered January 16, 1990 in Application No. C-783 be and it is hereby modified to increase the rates allowed by \$1.00 per month for business and residence subscribers to \$14.50 for business and \$10.65 for residence.

IT IS FURTHER ORDERED that all other provisions of the January 16, 1990 order remain in full force and effect.

MADE AND ENTERED at Lincoln, Nebraska this 1st day of May, 1990.

NEBRASKA PUBLIC SERVICE COMMISSION

Daniel G. Urwiller

Chairman

COMMISSIONERS CONCURRING:

Duane D. Gay

//s//James Munnelly

//s//Daniel G. Urwiller

ATTEST:

Eric Rasmussen

Executive Director

COMMISSIONERS DISSENTING:

//s//Frank E. Landis, Jr.

//s//Eric Rasmussen

The decision of the majority in this order again demonstrates the Commission's inability to regulate telephone companies. As hearing officer in this case, I am convinced that the staff's analysis of the Company's financial status was proper, and that allowing a rate of return of 8.9% on investment was fair and reasonable. No evidence was presented in the hearing to justify a 9.2% rate of return and no further evidence was submitted during oral arguments to justify an increase in rate of return from 8.9% to 9.2%.

The evidence shows that the Company is financed through REA loans, ranging from 2% to 7.5% with a weighted cost of 5.5%. The order allowing an 8.9% rate of return covers this debt cost plus a fair return for the equity holders. This order increased Cambridge residential rates from \$5.25 to \$10.65 per month, and business rates from \$7.50 to \$14.90 (including extended area service). The majority decision today increasing these rates from \$10.65 to \$11.65, and \$14.90 to \$15.90 is arbitrary and capricious and is not a reflection of the evidence presented to the Commission in this proceeding.

Eric Rasmussen
Commissioner Eric Rasmussen

Application No. C-783

I dissent. There are no grounds whatsoever for reversing the original order in this application. The majority's action today, May 1, 1990, is an arbitrary and capricious exercise of the Commission's authority made even more so by the failure to place this item of Commission business on the public agenda. The majority's order today, which rejects the rate of return analysis in the original order, increases the subscribers' cost by an additional one dollar (\$1.00) per month while relying on no new evidence to support such an increase. On the other hand, the evidence adduced at the hearing proved the need for the rate increase in the original order and no more. Beyond receiving an already generous serving at the banquet table as a result of the Commission's original order, Cambridge Telephone Company stockholders now receive an even richer dessert by this latest order while the subscribing ratepayers are left to pick up an expensive (and undeserved) tab.

In regard to the Cambridge matter, the following explanation of circumstances is helpful:

(a) The Commission unanimously issued an order January 16, 1990 raising the monthly telephone rates for Cambridge subscribers from five dollars and twenty five cents (\$5.25) to ten dollars and sixty five cents (\$10.65) per month. Business rates were raised from seven dollars and fifty cents (\$7.50) to fourteen dollars and ninety cents (\$14.90) per month. A copy of the order was mailed to the Cambridge Telephone Company on January 17, 1990.

(b) Cambridge Telephone Company filed a motion for rehearing of the order on January 29, 1990. Applicant was within the ten day time limit required by statute (See Section 75-137, R.R.S. Reissue 1986). Oral argument on the motion was held March 6, 1990.

(c) On March 27, 1990 Commissioner Urwiller moved to grant in part a "Motion for Rehearing and/or Reconsideration by Cambridge Telephone by changing the rate of return from 8.9% to 9.5%." The effect of the motion would have raised rates an additional two dollars (\$2.00) per month. Commissioner Urwiller's motion failed to receive a majority and the original order entered January 16, 1990 remained in effect.

(d) Now on May 1, 1990 a majority of Commissioners have approved a modification of the January 16, 1990 order which tacks another one dollar (\$1.00) per month onto the earlier increase.


I am distressed by the results brought about by the indirect appeal mechanism in this particular case. While it is true an interested party may appeal the original order if the Commission does not act upon the motion for rehearing within thirty days of its

filing, there is to me a resulting manifest injustice in this mechanism when the Commission fails to act in a timely manner, especially when the affected individuals are ratepayers in a small community who are unfamiliar with an administrative agency's maze of rules and regulations. Apparently, should this Commission not act upon a motion for rehearing, the original order will not become final until an appeal is perfected to the Supreme Court. This Commission could, in such a situation, retain its ability to revoke a previously issued order for an indefinite period of time.

I cannot agree such a procedure is proper even if it is legal. As the Supreme Court stated in Nebraska Public Power District v. Huebner, 202 Neb. 587, 276 N.W.2d 228 (1979): "There must be some finality to judgements and persons must be able to rely at some point in time upon the action of an administrative body. To hold otherwise would be to promote uncertainty and chaos." 202 Neb. 594. While complying with the letter of the statute, the spirit of that decision has been eviscerated by our action today.

Four months ago, the Cambridge subscribers thought this issue was settled. Now, out of the blue, with no opportunity to be heard, they will learn to their dismay that this Commission has once again ordered an increase in their monthly rates.

This result cannot be justified from an evidentiary standpoint and should not be justified from a procedural standpoint.


Commissioner Frank Landis, Jr.