

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) APPLICATION NO. C-873  
Henry & Vern Jantzen, Plymouth, )  
Nebraska, seeking authority to ) GRANTED  
receive telephone service from the )  
Plymouth exchange of the Lincoln )  
Telephone Company. ) Entered: May 14, 1991

APPEARANCES: For Diller Telephone Company  
Jack L. Shultz, Esq.  
P.O. Box 82028  
Lincoln, NE 68508

OPINION AND FINDINGS

BY THE COMMISSION:

By application filed December 18, 1990, Henry and Vern Jantzen of Plymouth, Nebraska seeks authority to receive telephone service from the Plymouth exchange of The Lincoln Telephone and Telegraph Company.

A copy of this application was served upon Diller Telephone Company (Diller) and The Lincoln Telephone and Telegraph Company (LT&T). A timely protest and request for oral hearing in the matter was filed on behalf of the Diller Telephone Company. Pursuant to notice required by law, public hearing was held on the application on March 28, 1991 in the City Council Chamber, Plymouth, Nebraska, with an appearance as shown.

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 individuals who live in Plymouth, Nebraska and are served by the Plymouth exchange of LT&T and the Harbine exchange of Diller Telephone Company. This is a dual application by Mr. Henry Jantzen, and his son, Mr. Vern Jantzen. Henry Jantzen lives two miles east and two south of Plymouth where he has farmed since 1953. In 1974, he purchased the farmstead where Vern Jantzen lives which is one mile south and one mile east of the home place. Henry Jantzen is in the Plymouth exchange served by LT&T, and Vern Jantzen in the Harbine exchange served by Diller.

2. Henry Jantzen testified. He filed applications with this Commission in 1974, 1975, and 1976 to extend the boundary of the Plymouth exchange of LT&T to include the purchased farmstead, which applications were denied. The purchased farmstead has a Plymouth address; it is in the Plymouth Fire District; it is located closer to Plymouth than to Diller. Recent events again have brought up the numerous problems and expenses associated with operating a single farm operation serviced by two separate telephone companies. In 1988, his son, Vern Jantzen, married and moved to a

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house on the farmstead in question. It soon became apparent that this communication between the farmsteads for business and pleasure would be expensive, and therefore only done on a minimal basis. As his son assumes more management responsibility, they will need to communicate more (T, 4-6). Henry Jantzen owns the property in question which consists of 355 acres divided by the two telephone companies. He owns the LT&T side of the property and the Diller side of the property with the house located on the Diller side of the property (T, 14). On cross examination, Henry Jantzen testified that he has lived all his life on his farm and has never lived on the property in question. In prior applications, neither he nor his son lived on the property in question (T, 16).

2. Vern Jantzen testified. He is farming with his father and lives on the farm southeast of Plymouth marked on Exhibit #3. Vern Jantzen testified that he is not receiving and will not within a reasonable time receive, reasonably adequate exchange telephone service. He testified that by the facts, this definition can extend beyond merely providing the physical service of the telephone alone, it also includes the community of interest. He uses the telephone for business and pleasure and his primary community of interest is with the Plymouth exchange. He and his brother have formed a partnership and farm the operation his father and he had been farming. He testified that the duplicated service issue does not exist because an LT&T cable is buried 108 feet north from the telephone service entrance to his house, while the Diller company has a cable 324 feet east of the service entrance to the house. He is willing to pay a reasonable cost associated with any loss to Diller and any reasonable cost to hook up to LT&T.

3. Vern Jantzen compared this application to the 1989 Nebraska Supreme Court case of In re Application of George Farm Co. v. Northeast Nebraska Telephone Company, 233 Neb. 23, 443 N.W.2d 285 (1989). The Supreme Court held in that case that, "From a consideration of the entire record, we find that it makes no sense for half of the applicant's property to be within one exchange and the other half to be within another exchange. We hold that the decision of the Commission denying the applicant's request to have all of its property placed within the service area of Northwestern Bell's South Sioux City exchange was unreasonable and arbitrary and should be reversed. The cause is remanded to the Commission with directions to grant the application." Id. at 27-28.

4. On cross examination of Vern Jantzen, he testified that his household averages 112 minutes plus 25 minutes per month to the Plymouth exchange. He uses the optional calling plan offered by Diller. He was not aware of whether the LT&T cable is suitable for service to his residence and has asked the engineering department of the company to investigate this matter. He is willing to pay reasonable construction costs.

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5. Mr. Bill Sandman testified on behalf of the Diller Telephone Company. He has been manager and assistant manager for approximately 26 years. The service the applicant is receiving is a digital, buried, one-party service, 1-plus direct dialing, touch-tone and full custom calling features are available. Since the last application, the company has installed digital switching and the underground cable for a complete one-party system. Two customers live north of Mr. Vern Jantzen's residence and are served out of the Harbine exchange. Approximately 120 customers are served out of this exchange. The LT&T cable which crosses Mr. Jantzen property is a toll cable, which was to serve the needs of LT&T exchanges and was not to result in any duplication of facilities. Mr. Sandman submitted and explained Exhibit 4 which shows Diller Telephone's Company investment in telephone plant serving a subscriber who has requested boundary change. This exhibit allocates \$1,261.21 per subscriber as its investment.

6. Section 75-613 Neb. Rev. Stat. as amended requires that before granting an application such as this, the Commission must find that 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. The fact that an applicant is required to pay toll charges for long-distance telephone calls to an exchange service area adjacent to the territory in which the applicant resides or operates shall not be deemed to constitute inadequate exchange telephone service from the company furnishing such service;

(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 exchanges;

(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 Public Service Commission.

7. Applicants have met their burden of proof as required by the statute and the Commission is cognizant of the mandate from the Nebraska Supreme Court in the George Farm Co. Case.

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8. Section 75-613, Neb. Rev. Stat. as amended requires that the Commission determine the loss of investment to Diller Telephone Company. Evidence of record establishes this loss of investment to be the sum of \$97.21, consisting of buried drop, \$60.90 and drop protector, \$36.31. The remaining investment shown on Exhibit 4 would not be displaced by granting this application.

9. 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, in accordance with Neb. Rev. Stat. 75-613, Application No. C-873 be and it is hereby granted.

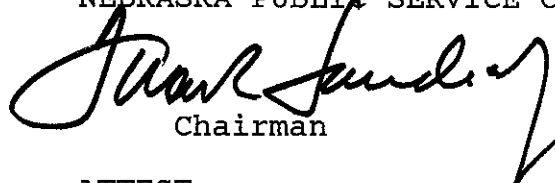
IT IS FURTHER ORDERED that the loss of investment to Diller Telephone Company be and it is hereby determined to be the sum of \$97.21 and that applicant file with the Commission a receipt showing payment of the same. Applicant is required to pay to LT&T the construction charge to connect the facilities using the most advantageous route to the applicant's premise.

IT IS FURTHER ORDERED that subsequent to applicant's payment to the Diller Telephone Company for the lost investment that both the Plymouth exchange boundary map and the Harbine exchange boundary map be revised to incorporate the entire farm property in question in the Plymouth exchange.

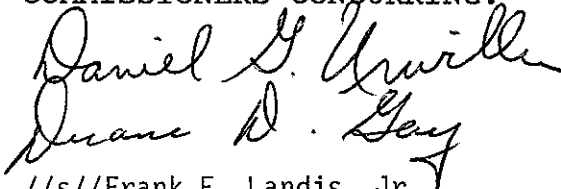
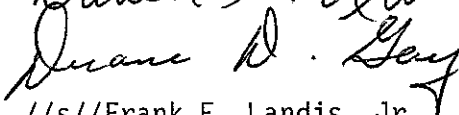
IT IS FURTHER ORDERED that if receipt of said payment is not made within 90 days of this order, the Diller Telephone Company and LT&T shall file revised boundary maps to incorporate the entire farm property within the territory of Diller Telephone Co. and remove said property from LT&T territory.

MADE AND ENTERED at Lincoln, Nebraska this 14th day of May, 1991.

NEBRASKA PUBLIC SERVICE COMMISSION

  
Chairman

COMMISSIONERS CONCURRING:

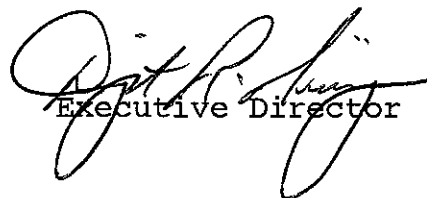
  


//s//Frank E. Landis, Jr.

//s//James F. Munnelly

//s//Eric Rasmussen

ATTEST:

  
Executive Director