

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission on) Application No. C-925
its own motion to determine the boun-)
dary between the Bushnell exchange of) BOUNDARY DETERMINED
Dalton Telephone Company and the Pine)
Bluffs and Albin, Wyoming exchanges of)
US West.) Entered: July 14, 1992

APPEARANCES

For Dalton Telephone Company
Paul M. Schudel, Esq.
WOODS AITKEN
1500 American Charter Center
206 South 13th Street
Lincoln, NE 68508
(402) 474-0321

For US West
Richard Johnson, Esq.
1314 Douglas On-The-Mall
Omaha, Nebraska 68102
(402) 422-5617

PRELIMINARY MATTERS

By docket filed August 7, 1990, the Commission on its own motion seeks to eliminate duplicate service areas and to determine the boundary between the Bushnell exchange of the Dalton Telephone Company ("Dalton"), Dalton, Nebraska and US West, a multi-state corporation. On March 24, 1992, the Commission sent letters by certified mail to Dalton, US West, and certain telephone subscribers residing within the Bushnell exchange notifying them of a hearing on this matter. Hearing was subsequently held April 29, 1992 in the Kimball County Courthouse, Kimball, Nebraska, Commissioner Urwiller chairing.

BY THE COMMISSION

O P I N I O N A N D F I N D I N G S

The Commission opened this docket for the purpose of determining the boundary between Dalton's Bushnell exchange and US West's Pine Bluffs and Albin, Wyoming exchanges. The evidence presented at the hearing clearly establishes that no dispute exists regarding Dalton's authority to serve the entire area of the Bushnell exchange extending to the Nebraska-Wyoming state boundary line. This service area is shown on the Bushnell exchange map filed with and approved by the Commission December 24, 1981 (Exhibit D). US West's witness, Tim Wilkins, testified that US West has no facilities which extend into Nebraska from either its Pine Bluffs or Albin exchanges and that US West has no interest in constructing facilities extending into Nebraska from these exchanges.

However, due to certain facts which are unique to this docket, the absence of a dispute between Dalton and US West concerning a duplicate service area does not resolve this matter. Residing within the western portion of Dalton's Bushnell exchange are 28 subscribers who own the telephone facilities through which each is connected as a service station subscriber to US West's Wyoming facilities. Exhibit A attached hereto and incorporated by reference lists the name and address of these subscribers. Three of these subscribers currently have local exchange service from Dalton in addition to their service station line. These dual-service individuals are designated with an asterisk on Exhibit A.

Two of the service station subscribers, John Marquardt and Eldon Lundberg, testified that this type of service has existed since 1920 and 1918, respectively. Mr. Marquardt and Mr. Lundberg testified that they are satisfied with their service station lines, and that their communities of interest are Pine Bluffs and Albin, respectively. The community of interest of other service station subscribers who testified at the hearing was also predominantly with Pine Bluffs or Albin rather than Bushnell.

Service station subscribers who testified stated that they either maintain and repair their service lines themselves or contract with third parties for repair service. The extent of service outages varies among the subscribers who testified. Gordon Maurer stated that outages ranged from a few hours to two days. Charlene Malm testified that her family has had "nothing but trouble" with their service station line and has spent \$4,000 on repairs.

Two individuals who have both a service station line and Dalton service testified. Charles Person stated his dual service works very well. As a result of his position as a local government official, Mr. Person testified that having reliable telephone service is critical to him. He complimented the service record of Dalton's local exchange service, and stated he would make all long distance calls through the Dalton service in order to retain Dalton's service. The service station line connected to US West's Albin exchange is valuable to Mr. Person due to his community of interest in Albin.

Larry Malm also has dual service. The Dalton service is valuable to Mr. Malm due to its clarity and reliability. As an agribusinessman, Mr. Malm sends and receives fax messages and makes all long distance calls over Bushnell local exchange facilities. As with Mr. Person, the service station line connected to US West's Albin exchange is valued by Mr. Malm since it allows him to reach that community of interest without paying toll charges.

Lowell Swanson, Dalton's President, testified. He offered a solution to the unique circumstances involving these service station subscribers. Mr. Swanson proposed:

1. The exchange boundaries of Dalton's Bushnell exchange, as set forth in the exchange map on file with the Commission (Exhibit D), should be confirmed;
2. A date should be established by which time Dalton will have extended facilities to each of the service station locations not currently served by Dalton, without any special construction charges imposed on the subscriber.
3. All service station subscribers should be required to subscribe to Dalton's local exchange service, however, service station lines may be continued on a "grandfathered" dual service basis; provided, however, that all toll traffic would be carried over Dalton's facilities and the service station lines be toll-restricted; and
4. The Commission should impose reasonable grandfathering restrictions on the continuation of the service station lines.

Mr. Swanson also testified that all proposed service to the affected subscribers consist of one-party private lines with digital switching from the Bushnell exchange. The basic local exchange rate for such service is currently \$10.00 per month.

The object and purpose of Commission control of common carriers is to secure adequate sustained service for the public at the lowest reasonable cost and to protect and conserve investments made for that purpose. *Chambers Rural Tel. Co., Inc. v. K & M Tel. Co., Inc.*, 179 Neb. 735, 140 N.W.2d 400 (1966).

It is clear, under the general constitutional powers of the Commission (Article IV, Section 20, Nebraska State Constitution) and Neb. Rev. Stat. §75-604 (1990 Reissue), that a licensed operating telephone company has a monopoly, subject to regulation by the Commission of all forms of telephone service in its defined area. *Radio-Fone, Inc. v. A.T.S. Mobile Telephone, Inc.*, 187 Neb. 637, 193 N.W.2d 442 (1972).¹ A telephone company may not enter the certifi-

¹ We recognize that a telephone company's monopoly is affected today by certain aspects of de-regulation in this state brought about by passage of L.B. 835 (LAWS (Footnote Continued)

cated territory of another telephone company to render long distance service without application for and receipt of a certificate. *Northwestern Bell Tel. Co. v. Consolidated Tel. Co.*, 180 Neb. 268, 142 N.W. 2d 324 (1966).

It is undisputed in this matter that the area in question is certificated to Dalton as part of its Bushnell exchange. It is further undisputed that US West has been, and is providing long distance service to those subscribers listed on Exhibit A who do not currently have dual service from Dalton. The Commission finds that long distance service should not be continued by US West to the service station subscribers listed in Exhibit A except as provided for by the terms of this order.

The Commission has found no legal precedent which suggests that, under the facts existing in this docket, the 28 subscribers should be precluded from continuing to operate their service station lines to obtain local exchange service from either the Albin or Pine Bluffs exchanges of US West. Continuation of these lines will allow these subscribers to call within their local community of interest without a toll charge.

The Commission further finds that Dalton's current rate for one-party basic local exchange service of \$10.00 per month is fair and reasonable. This is particularly true in light of Mr. Swanson's proposal to waive construction charges to extend Dalton's telephone plant to serve these subscribers. However, in order to conserve Dalton's financial resources and allow for systematic planning and design of the new telephone plant to be constructed, the Commission finds that each of the subscribers listed in Exhibit A should be informed that receiving Dalton basic local exchange service without payment of construction charges will occur only if such subscriber commits in writing, not later than October 1, 1992, to accept such service from Dalton.

Upon consideration of the evidence presented and being fully advised, the Commission is of the opinion and finds that (a) the boundary between Dalton's Bushnell exchange and the Pine Bluff and Albin, Wyoming exchanges of US West and (b) the matter of providing telecommunications service by Dalton to the subscribers listed in Exhibit A hereto should be resolved as follows:

(Footnote Continued)

1986), for example, de-regulation of cellular service; however, nothing in L.B. 835 affects the local exchange carriers' monopoly status in this proceeding.

1. The exchange boundaries defining Dalton's Bushnell exchange, as shown in Exhibit D, are to be reaffirmed.

2. Subject to paragraphs 3 and 6 below, the existing service station lines of those subscribers listed on Exhibit A should be grandfathered until such subscriber moves, sells his or her property, or the service station line is intentionally disconnected for any reason, the only exception being transfer of the property to another family member who is a member of the household as of the date of this order; and thereafter telecommunications service shall be provided exclusively by Dalton.

3. The service station lines should be toll restricted by US West, with the cost of doing so taxed to Dalton², so as to be disabled from initiating outgoing long distance calls, with all outgoing long distance calls placed by subscribers to be carried by Dalton. The division of the costs for toll restricting the service station lines is premised upon the commitment by US West to waive any monthly charges, whether pursuant to tariff or otherwise, to the subscribers for toll restricting the service station lines. Subscribers should still be able to receive incoming toll calls on both the Dalton and US West phone systems until such time that the Pine Bluff and Albin, Wyoming, exchanges of US West are converted from step-by-step central office equipment to digital central office equipment. From such time forward, all originating and terminating calls to the subscribers should be carried by Dalton.

4. All subscribers listed on Exhibit A should be promptly informed in writing of this order and should be required to advise Dalton in writing not later than October 1, 1992, of such subscrib-

² Dalton is to compensate US West for US West's cost to toll restrict the 28 subscribers in an amount not to exceed \$5,500 for installation of the toll restriction equipment and US West shall provide Dalton with documentation to substantiate the amount billed to Dalton.

er's decision to obtain basic local exchange service from Dalton.

5. Dalton should be ordered to waive all special construction charges to any subscriber listed on Exhibit A who elects, on or before October 1, 1992, to subscribe to basic local exchange service from Dalton.

6. Dalton should be ordered to complete construction of the necessary telephone plant to service all subscribers who elect to subscribe to Dalton service in accordance with paragraph 4 above by June 1, 1993, unless construction is delayed for reasons beyond Dalton's control.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the exchange boundaries defining Dalton's Bushnell exchange, as shown in Exhibit D, are reaffirmed.

IT IS FURTHER ORDERED that, subject to the terms of this order, the existing service station lines of those subscribers listed on Exhibit A shall be grandfathered until such subscriber moves, sells his or her property, or the service station line is intentionally disconnected for any reason, the only exception being transfer of the property to another family member who is a member of the household as of the date of this order; and thereafter telecommunications service shall be provided exclusively by Dalton.

IT IS FURTHER ORDERED that the service station lines shall be toll restricted by US West, with the cost of doing so taxed to Dalton, so as to be disabled from initiating outgoing long distance calls, with all outgoing long distance calls placed by subscribers to be carried by Dalton. Dalton shall compensate US West for its cost to toll restrict the 28 subscribers in an amount not to exceed \$5,500 for installation of the toll restricting equipment. The division of the costs for toll restricting the service station lines is premised on the commitment by US West to waive any monthly charges, whether pursuant to tariff or otherwise, to the subscribers for toll restricting the service station lines. Subscribers shall still be able to receive incoming toll calls on both the Dalton and US West phone systems until such time that the Pine Bluff and Albin, Wyoming exchanges of US West are converted from step-by-step central office equipment to digital central office equipment. From such time forward, all originating and terminating calls to the subscribers shall be carried by Dalton.

Application No. C-925

Page -7-

IT IS FURTHER ORDERED that all subscribers listed on Exhibit A shall be promptly informed in writing of this order and shall be required to advise Dalton in writing not later than October 1, 1992, of such subscriber's³ decision to obtain basic local exchange service from Dalton.

IT IS FURTHER ORDERED that Dalton shall waive all special construction charges to any subscriber listed on Exhibit A who elects, on or before October 1, 1992, to subscribe to basic local exchange service from Dalton.

IT IS FURTHER ORDERED that Dalton shall complete construction of the necessary telephone plant to service all subscribers who elect to subscribe to Dalton service in accordance with the terms of this order by June 1, 1993, unless construction is delayed for reasons beyond Dalton's control.

MADE AND ENTERED at Lincoln, Nebraska this 14th day of July, 1992.

NEBRASKA PUBLIC SERVICE COMMISSION

Commissioners Concurring:

Deane D. Gay
 //s//James F. Munnelly
 //s//Eric Rasmussen
 //s//Daniel G. Urwiller

Daniel G. Urwiller
 Vice Chairman

ATTEST:

D. R. [Signature]
 Executive Director

³ We strongly encourage those subscribers to send such writing to Dalton by certified mail and to retain a photocopy of the correspondence.

EXHIBIT A

Ligie Rundell, North Route Box 45, Pine Bluffs, WY 82082
 E.A. Rundell, HC 61 Box 44, Pine Bluffs, WY 82082
 *Larry Malm, HC 61, Box 50, Pine Bluffs, WY 82082
 Lee Malm, HC 61, Box 38, Pine Bluffs, WY 82082
 David Person, North Route, Pine Bluffs, WY 82082
 *Charles Person, RFD, Pine Bluffs, WY 82082
 *Lloyd May, North Route, Pine Bluffs, WY 82082
 C.W. Palm, P.O. Box 73, Albin, WY 82050
 Eldon Lundberg, P.O. Box 66, Albin, WY 82050
 Brad Jacobsen, P.O. Box 73, Albin, WY 82050
 Gerald Anderson, North Route, Box 75, Pine Bluffs, WY 82082
 Patrice Dornan, P.O. Box 864, Pine Bluffs, WY 82082
 Dawn McNamee, P.O. Box 813, Pine Bluffs, WY 82082
 Gross Wilkinson Ranch, P.O. Box 867, Pine Bluffs, WY 82082
 Kenneth Rageth, P.O. Box 26, Pine Bluffs, WY 82082
 James Sterle, P.O. Box 174, Pine Bluffs, WY 82082
 Charles Strube, Jr., P.O. Box 204, Pine Bluffs, WY 82082
 Greg Marquardt, P.O. Box 322, Pine Bluffs, WY 82082
 Randall Malm, P.O. Box 947, Pine Bluffs, WY 82082
 Marie Joska, P.O. Box 123, Pine Bluffs, WY 82082
 Kenneth Johnson, P.O. Box 206, Pine Bluffs, WY 82082
 Henry Constable, P.O. Box 688, Pine Bluffs, WY 82082
 Milton Lundberg, RR, Albin, WY 82050
 Brian Kimzey, P.O. Box 886, Pine Bluffs, WY 82082
 Christopher Rundell, HC 61, Box 47, Pine Bluffs, WY 82082
 Chuck Wayne Palm, Albin, WY 82050
 Glenda Gardner c/o LeRoy Gardner, 314 Country Road 161,
 Pine Bluffs, WY 82082
 Dan Janicek, 302 Maple, Pine Bluffs, WY 82082