

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) APPLICATION NO. C-952
Infodial, Inc., Minneapolis, Minnesota,)
seeking an order directing all local) APPLICATION DISMISSED
exchange companies to assign applicant an)
abbreviated N11 dialing code.) ENTERED: JUNE 2, 1993

APPEARANCES: For the Applicant:
John M. Boehm, Esq.
822 South 13th Street
Lincoln, NE 68508

For the Intervenor:
Nebraska Telephone Association
Jack L. Shultz, Esq.
P.O. Box 82028
Lincoln, NE 68501

For the Protestant:
US West Communications
Richard L. Johnson, Esq.
1314 Douglas Street
Omaha, NE 68102

BY THE COMMISSION:

OPINION AND FINDINGS

By application filed September 8, 1992, Infodial, Inc., Minneapolis, Minnesota, seeks an order from this Commission directing all local exchange companies to assign Infodial an abbreviated N11 dialing code. Notice of the application was published in The Daily Record, Omaha, Nebraska, on November 23, 1992, pursuant to the rules of the Commission. A protest was filed by US West Communications. The Nebraska Telephone Association (NTA) formally intervened. Hearing on the application was held March 29, 1993, in the Commission Hearing Room with appearances as shown. A motion to dismiss the application was filed by US West.

Infodial's petition may be summarized as follows: 1. There exists in any area code eight N11 numbers. 2. Three of them (411, 611, and 911) are currently in use in Nebraska. 3. The remaining five (211, 311, 511, 711, and 811) are not yet used. 4. Assignment of abbreviated dialing codes to service providers such as Infodial is in the public interest because doing so will provide consumers/ratepayers in Nebraska with ready and convenient access to services for which there is a present and substantial demand. 5. Assignment and utilization of such dialing codes furthers the public interest by generating additional revenues for each local exchange carrier (LEC) without requiring additional capital investment by it. 6. Infodial seeks assignment of the 511 dialing code, but an alternate code is acceptable.

Applicant produced one witness, Richard Bell, who testified: He is president of the applicant. Infodial was formed in September 1992. Applicant seeks to provide information services through an N11 access service. It is seeking authority of state commissions around the country to have LEC's assign N11 codes to it. It wants to use 511

for its information service. US West has denied use of that number. Applicant wants to provide the public with news, weather, sports, stock quotes, commodities prices, health-related and medical information, and a host of other services. Exhibit 3 shows the information directory for the Houston Post. The Houston Post line is a very few months old. It receives 400,000 calls per month. If applicant is assigned 511, the caller would dial 511 and the central office would convert the dialed digits to a seven-digit number which would be connected to applicant's premises. Exhibit 4 shows in simple terms how the technical access to 511 occurs. A Knoxville information line receives 200,000 calls per month. The Atlanta Journal receives 12,000,000 calls per year. An Austin, Texas line receives 400,000 calls per month. Those are seven-digit services. Lincoln Telephone has a seven-digit service in Lincoln called Fingertips. The service offered by applicant would be in a position to help a pregnant woman, someone who has an alcohol problem, seekers of weather information, and provide stock updates as well as sports information. Applicant wants to provide the service free. Currently, the service is furnished in Palm Beach, Florida, for 50 cents per call. A free service would be advertiser supported. Exhibit 6 is a copy of Southern Bell's proposed tariff in Georgia. The tariff shows that the service can be offered without difficulty. The 976 local call service is unsatisfactory. The 900 service is also unsatisfactory. Dialing 11 digits instead of 3 is not as attractive and not as easy to remember for consumers. He called for 950 service but could not obtain it. 555-XXXX service is not available at this time. If the application is approved and the LEC is ready, applicant can provide service within 45 to 90 days, possibly sooner. He believes the service would spur economic activity in the state. If granted, the application would be consistent with the aims of LB835, which was passed to open the door to competition against LEC's. Florida has taken the lead in providing N11 service to the Palm Beach Post on an experimental basis. Granting the application would further the purposes of Nebraska's economic development policy by overcoming the monopoly control of the LEC's over telephone numbers. LEC's are information providers. They recognize the power of N11 numbers to deliver information, which is why they refuse to allow other information providers access to the N11 code numbers for fear of competition. Applicant suggests that allocation of N11 numbers should be done on a first-come first-served basis as the fairest method. If the service cannot be supported by advertising, he wants to furnish the service for 15 to 20, or at most, 25 cents per call for a five-minute call. He would not commit applicant to investment in all rural areas. Applicant would help to assist those who wish to make it available in small areas.

The intervenor produced one witness, Norman Osland, who testified: He is president of the NTA. NTA is comprised of 42 local exchange carriers. The FCC has opened Docket No. 92-105 for the purpose of adopting rules for the assignment of N11 numbers. NTA believes a national approach to the issue would be most desirable. If this Commission is to decide to exercise jurisdiction over assignment of N11 numbers, it should undertake a rulemaking procedure so that petitioners and LEC's have guidance on the process. It would not be appropriate to order any LEC to assign the five or six remaining N11 codes to a few information service providers. On July 29, 1992, the

National Association of Regulatory Utility Commissioners adopted a resolution opposing use of N11 service codes for enhanced-service providers. Iowa has denied Infodial's petition because it believes N11 dialing codes should be reserved for public uses. The New York Department of Public Service entered an order on October 21, 1992, denying Infodial's petition, as well as that of two other petitioners. The Nevada Public Service Commission denied Infodial's petition on January 25, 1993. The Montana Public Service Commission denied Infodial's petition for assignment of N11 dialing codes on December 15, 1992, because the commission recognized the value of reserving codes for public service uses. The Colorado Public Utilities Commission had no rules regulating assignment of abbreviated dialing codes. The Colorado PUC determined it would be premature to act on Infodial's petition in light of the FCC rulemaking docket.

Protestant US West called one witness, Peggy Nownes, who testified: She is director-product and market issues for US West. US West opposes Infodial's petition because: (1) The granting of the petition would give Infodial an unfair competitive advantage over other information services providers. (2) The demand for N11 numbers already exceeds the very limited supply. (3) The assignment of N11 numbers at this time could preclude future national public service uses of such numbers, including their use as area codes. (4) Costs will increase resulting from network infrastructure upgrading necessary to implement N11 routing, billing, and recording. (5) US West believes that there should be a uniform national approach to issues raised by Infodial's petition. This matter should be handled on a national basis because a uniform numbering policy is essential to efficient operation of a nationwide telephone network. Additional costs would be incurred in US West exchanges which operate with step-by-step equipment that cannot accommodate use of N11 codes. Although upgrading is already planned throughout the company, it would be costly to expedite the change. There are only eight N11 numbers. Two have already been universally utilized, 911 and 411. In some locations 611 and 811 are utilized for repair and business office calls. US West has already received more requests for N11 number assignments than could be accommodated by the remaining supply of N11 numbers. Assignment of the limited supply of N11 numbers will confer an unfair competitive advantage on the few companies that receive them. US West has had more than two dozen requests for the N11 numbers. Ten of those have been from Nebraska. If the number were issued on a first-come first-served basis, Infodial would stand ninth on the list. In Nebraska only four N11 numbers are unused. US West has provided since 1985, 976 and 960 services that are available to information service providers in the US West region. Traditional business lines are also available. Feature group B service, known as 950, provides an information provider with a national seven-digit number and the 900 service access code has been reserved exclusively for information provider use. If Infodial's request were limited to Omaha, US West would not have a problem recouping the billing information as it would in step-by-step offices.

Article IV, Section 20, of the Constitution of the State of Nebraska provides that the Public Service Commission has the following authority:

APPLICATION NO. C-952

PAGE FOUR

The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the Commission shall exercise the power and perform the duties enumerated in this provision.

Neb. Rev. Stat. Section 86-803 (Reissue 1987) provides as follows:

Except as provided in Section 86-801 to 86-811, telecommunications companies shall be subject to regulation by the Commission.

The Commission shall retain quality of service regulation over the services provided by all telecommunication companies and shall investigate and resolve subscriber complaints concerning quality of telecommunication service, subscriber deposits and disconnection of service.

Nothing in Section 86-801 through 86-811 would bar the Public Service Commission from granting the request of Infodial in this proceeding. N11 service is a local calling arrangement and as such constitutes part of local exchange service.

This interpretation of the Commission's power is consistent with Marquis v. Polk County Telephone Co., 100 Neb. 140, 144, 158 N.W. 927, 928 (1916):

It (the PSC) is granted powers and duties which include the regulation of rates, services, and general control of common carriers as directed by the Legislature. In a field where the Legislature has not acted, the commission is authorized to exercise the powers and perform the duties enumerated in the constitutional provision.

In State ex. rel. Spire v. Northwestern Bell Telephone Company, 233 Neb. 262, 445 N.W. 2nd 284 (1989), the court stated that:

LB835 does not totally divest the PSC of jurisdiction over telecommunication companies, completely preclude the PSC's regulation of telecommunication companies, or transfer regulatory control to a government agency, body of government, or branch of government except the Legislature.

Id. at 277, 278.

The court noted that LB835 simply restricted the situations and manner in which the Commission may exercise its regulatory power over the rates of telecommunication companies. The court further noted that, "The act preserves the Commission's regulatory jurisdiction regarding quality of service and entry into the telecommunication market and, therefore, does not divest the Commission of its regulatory power over telephone companies." Id. at 279.

Infodial's request is consistent with the legislative policy of Nebraska as set forth in LB835 now Neb. Rev. Stat. Section 86-801 (Reissue 1987):

The legislature declares that it is the policy of the State to:...(2) maintain and advance the efficiency and availability of telecommunication services; ... and (4) promote diversity and the supply of telecommunication services and products throughout the state.

To carry out this legislative policy this Commission has the necessary authority and jurisdiction to hear the application of Infodial, as set forth herein, and determine whether a grant of the application is consistent with the law, rules and public policy administered by this Commission.

Infodial's application raises a number of new issues that this Commission has not had occasion to confront before this application was filed. Should local operating companies be permitted to allocate N11 numbers to commercial users? Will a national policy be enunciated by the FCC in Docket 92-105 which would conflict with the decision of this Commission? How should this scarce resource be allocated? Is a first-come first-served policy the best? Should a fitness test be part of the process? Are the Commission rules adequate to administer the allocation of N11 numbers?

There is no question that the supply of N11 numbers is very small. Whether LEC's should assign those numbers to information services will require substantial investigation and deliberation as to the method for assigning those numbers and the criteria that should be required of a recipient of one of those numbers. Should the recipient be required to provide a state-wide service? Should advertising be part of the recipient's plan for use of the number? Should any assignee of an N11 number be required to have substantial net worth and proof of ability to operate the service it proposes? Those issues were not resolved in this proceeding, nor was the public notified that they would be.

The impact on any state decision regarding administration of N11 numbers by any decision of the FCC in Docket 92-105 is yet to be determined. At this point in time it would appear that the state commissions should allow the FCC a reasonable period of time to come forth with a national policy, if indeed the FCC does intend to announce a national policy, before the states plunge into the business of allocating N11 numbers.

As has already been observed, the criteria for allocation of N11 numbers has not been established. Whether the first-come first-served allocation method is the fairest and best for the public is yet to be seen. Even if the Commission ruled, as the applicant here would have it, the first-come first-served method would not work to the applicant's benefit. According to the testimony of US West, applicant would be ninth on the list for allocation of some five or six numbers.

APPLICATION NO. C-952

PAGE SIX

Although rules regarding the standards of fitness have not been developed, certainly this Commission should require some showing that an applicant for such a scarce resource is fit, willing and able to provide the service it proposes to provide to the public if the application is granted. In this record there was no showing of the financial soundness of the applicant. The evidence shows that the applicant has no apparent experience providing information services as it proposes to do in this state.

Before any application of this nature can be granted, it is abundantly clear that the Commission must initiate a rulemaking proceeding so as to (1) give all applicants a clear indication of the criteria they must meet in order to prevail on such an application, and (2) protect the public against a premature and wasteful expenditure of a scarce resource.

From consideration of the law, and the evidence adduced in this matter, the Commission finds that the motion to dismiss filed by the protestant should be sustained. Dismissal of this application will not in any way preclude Infodial from filing a new application at such time as the Commission has established a policy and rules for the implementation of such policy.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application No. C-952 of Infodial, Inc. be, and it is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 2nd day June, 1993.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Daniel G. Kravill
Duane D. Gay

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

Frank E. Landis, Jr.
Chairman

ATTEST:

James F. Munnelly
Executive Director

APPLICATION NO. C-952

PAGE SEVEN

CONCURRING OPINION BY COMMISSIONER LANDIS:

I concur in the holding of the majority; however, I want to go on record in support of the proposition that if the Commission eventually concludes that N11 numbers should be allocated on a first-come first-served basis, Infodial, Inc. should be considered to have been the first applicant to have come before the Commission and should be allocated the first issued N11 number assuming it meets all other criteria established by the Commission.


Frank Landis