

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Santee Sioux Tribe of Nebraska
Niobrara, Nebraska,

Complainant,

vs.

Northern Telephone Company,
Blair, Nebraska,

Defendant,

Formal Complaint No. FC-1146

SUSTAINED IN PART
OVERRULED IN PART

Entered: May 4, 1982

APPEARANCES: For the Complainant
John M. Peebles, Attorney
Niobrara, Nebraska

For the Defendant
John Samson, Attorney
Blair, Nebraska

OPINION AND FINDINGS

BY THE COMMISSION:

By formal complaint filed October 7, 1981, the Santee Sioux Tribe of Nebraska, Niobrara, Nebraska charges that defendant, Northern Telephone Company, Blair, Nebraska was demanding payment by complainant of unauthorized third party telephone calls and was threatening to disconnect service.

Defendant's Answer was filed on October 21, 1981.

Pursuant to notice required by law, public hearing was held on the formal complaint on December 15, 1981, at 2:00 p.m. in the Commission Hearing Room, Lincoln, Nebraska with appearances as set forth above.

Upon consideration of the formal complaint, the evidence adduced at the hearing and being fully advised, the Commission is of the opinion and finds that:

1. Complainant is a corporation organized under the Indian Organization Act of 1934 and is a subscriber to telephone service at Niobrara, Nebraska.
2. Defendant is a corporation organized and existing under the laws of the State of Nebraska with its principal place of business at Blair, Nebraska. It is engaged in the telephone business as a common carrier providing service through exchanges located at Creighton and Niobrara, Nebraska.
3. The complaint alleges that the complainant has been billed for and has paid, under threat of disconnection, third number billed long distance calls in an amount of \$4,018.61 for the year 1981 up until the complaint was filed. The complainant alleges that the third number calls were not authorized by it and that it should not be responsible for payment, and asks that defendant be ordered to refund the \$4,018.61 which had been paid.
4. Defendant responds that complainant is responsible for payment of all charges to its telephone numbers under an implied agreement between the subscriber and the telephone company, commencing when application is made for service and the telephone service provided by the telephone company. The implied agreement is that the telephone company shall continue to supply telephone service as long as the subscriber continues to pay the telephone service charges and toll charges assessed against its telephone number.
5. The witness for the Defendant testified that the telephone company made every effort in supplying information to the complainant to assist it in determining the party or parties making third number billings to the telephone of the Santee Sioux Tribe. The witness for the telephone company further testified that they had offered to change the telephone number of complainant, to assign it an unlisted number or issue credit cards, all in an effort to solve the third number billing problem.

6. The telephone company witness testified that if the Tribal Council would pass a resolution and furnish a copy to the defendant stating that they would not be responsible for any third number calls charged to the tribe's numbers, that the telephone company would then assume the responsibility to investigate such calls and make every effort to prosecute the parties making the then unauthorized calls. If that proved unsuccessful, the Northern Telephone Company could turn the amount over to Northwestern Bell Telephone Company for an adjustment.

7. The telephone company witness further testified that since the Northern Telephone Company did not maintain a toll center, it had no way to verify third number billings with its customers. It was pointed out that any such verification would have to be performed by the toll operators of Northwestern Bell Telephone Company at the toll center owned and operated by them.

8. The Business Manager of Santee Sioux Tribe testified that none of its employees are authorized to make third number long distance calls and that all such calls billed are unauthorized. He testified that the bills for January, February and March, 1981 were paid without complaint. He further testified that he did not feel that changing the telephone number or having an unlisted number or credit cards would solve the third number billing problem.

9. The evidence indicates that defendant made substantial efforts to assist the complainant in determining the parties responsible for the third number billings and suggested number changes and unlisted numbers in an effort to solve the third number billing problem.

10. The evidence further indicates, however, that complainant was not notified prior to its filing the Formal Complaint that a resolution could be passed by the Tribal Council, and a copy thereof furnished to defendant, to the effect that no third number billings to the Santee Sioux Tribe phone number are permitted or authorized, in which case the telephone company would then be responsible for the prosecution of the person or persons responsible for the attempting of such calls.

11. It is obvious that a fraud has been committed in the placing of third number long distance calls and in the judgement of this Commission the losses as a result thereof should be shared by the complainant and the telephone companies involved, namely, Northern Telephone Company and Northwestern Bell Telephone Company.

12. The Commission finds that the complaint should be sustained in part and overruled in part, as follows:

(a) Complainant shall receive no refund on the third number billed long distance calls which appeared on the January, February, and March, 1981, telephone bills since such bills were paid without complaint.

(b) Defendant shall refund the third number billed calls which appeared on the April thru September, 1981, billings.

(c) Defendant shall give complainant credit for the third numbered billed calls on the October and November, 1981 billings.

(d) Complainant shall be responsible for third number billings to its telephone number from December 1, 1981, to date that a Tribal Council passed resolution was or is furnished to Northern Telephone Company, stating that the Santee Sioux Tribe will not be responsible for any third number calls billed to its telephone number. In the event such a resolution has not been passed and is not passed within 30 days from the date of this order, no refund or credit as specified in paragraphs (b) and (c) above shall be allowed.

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(e) Complainant and Northwestern Bell Telephone Company, the toll center company, shall be responsible for the investigation of third number calls billed to the Santee Sioux Tribe number following receipt of the Tribal Council passed resolution as mentioned in (d) above, for the prosecution of the parties making the then unauthorized calls and for any losses of revenue relating to such third number billed calls.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that FC-1146 be and it is hereby sustained in part and overruled in part.

IT IS FURTHER ORDERED that:

- (a) Complainant shall receive no refund on the third number billed long distance calls which appeared on the January, February, and March, 1981, telephone bills since such bills were paid without complaint.
- (b) Defendant shall refund the third number billed calls which appeared on the April thru September, 1981, billings.
- (c) Defendant shall give complainant credit for the third numbered billed calls on the October and November, 1981, billings.
- (d) Complainant shall be responsible for third number billings to its telephone number from December 1, 1981, to date that a Tribal Council passed resolution was or is furnished to Northern Telephone Company, stating that the Santee Sioux Tribe will not be responsible for any third number calls billed to its telephone number. In the event such a resolution has not been passed and is not passed within 30 days from the date of this order, no refund or credit as specified in paragraphs (b) and (c) above shall be allowed.
- (e) Complainant and Northwestern Bell Telephone Company, the toll center company, shall be responsible for the investigation of third number calls billed to the Santee Sioux Tribe number following receipt of the Tribal Council passed resolution as mentioned in (d) above, for the prosecution of the parties making the then unauthorized calls, and for any losses of revenue relating to such third number billed calls.

MADE AND ENTERED at Lincoln, Nebraska, this 4th day of May, 1982.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold D. Simpson
Chairman

ATTEST:

Terrence L. Kubicot
Secretary

COMMISSIONERS CONCURRING:

Duane D. Gay