

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

R. Brent Cherry, Seward, Nebraska,) APPLICATION NO. FC-1240
Complainant,)
vs.)
The Lincoln Telephone and Telegraph) DISMISSED
Company, Lincoln, Nebraska,)
Defendant.) ENTERED: JUNE 7, 1994

APPEARANCES

For the Complainant:

R. Brent Cherry, pro se
1426 North H Street
Seward, NE 68434

For the Respondent:

Paul M. Schudel, Esq.
206 South 13th Street
Suite 1500
Lincoln, NE 68508

For the Commission:

Jeff Goltz, Esq.
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

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

By Formal Complaint filed January 31, 1994, R. Brent Cherry of Seward, Nebraska, has complained as to the poor quality of service offered by The Lincoln Telephone and Telegraph Company ("LT&T") in its Seward, Nebraska, exchange, based upon the unavailability of a custom calling feature known as "forward on busy/no answer" service.

A copy of the complaint was served on LT&T pursuant to the provisions of the Commission's Rules and Regulations. By letter dated February 22, 1994, from Mr. William J. Ashburn, Industry Relations Manager of LT&T, LT&T answered the complaint.

Hearing on the complaint was held March 30, 1994, in the Commission Hearing Room, with appearances as shown above.

Complainant testified in support of his formal complaint, offering as evidence information consistent with the attachment to the formal complaint. Although indicating that he believed that other subscribers in the Seward exchange were interested in the "forward on busy/no answer" service, complainant presented no competent evidence establishing that any subscriber in LT&T's Seward exchange seeks this

APPLICATION NO. FC-1240

PAGE TWO

service at this time. Complainant acknowledged that he could obtain equipment to render the service which he desires but that the apparent cost of such equipment is unacceptable. Further, he indicated that a telephone receptionist could provide the service which he desires but that the cost of employing a receptionist was unacceptable.

William J. Ashburn testified on behalf of LT&T. The cost of implementing the "forward on busy/no answer" service requested by complainant would entail a one-time cost of \$3,800, payable to LT&T's switch manufacturer, for the right to use and activate the service on the switching equipment which is a Northern Telecom DMS-10 switch. Mr. Ashburn testified that LT&T was unaware of the interest of any other subscribers in its Seward exchange for the service being requested by complainant. Mr. Ashburn testified that, under the circumstances, a business case could not be made for deployment of the service due to lack of demand. Mr. Ashburn indicated that LT&T was willing to explore with complainant the terms of a service contract for a stated period of time for provision of the service. In the alternative, LT&T was willing to assist Mr. Cherry in identifying and obtaining equipment which would provide service comparable to that which he has requested.

In its exercise of its regulatory authority relating to common carriers, this Commission must look at the public interest as a whole. In the instance of this formal complaint, a single subscriber has expressed a desire for a service for which there is no evidence of demand by other subscribers. This subscriber, the complainant, has also testified to his unwillingness to enter into a contractual arrangement with LT&T at rates which would be compensatory for the costs of implementing the requested service.

From the evidence adduced at hearing, and being fully informed in this matter, the Commission is of the opinion and finds that sustaining this formal complaint would not be in the public interest, and, therefore, this formal complaint should be dismissed.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that FC-1240 be, and it is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day June, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

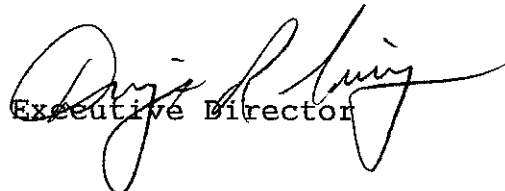
//s//Duane D. Gay
//s//James F. Munnelly
//s//Daniel G. Urwiller


Chairman

ATTEST:

COMMISSIONERS DISSENTING:

//s//Frank E. Landis


Executive Director

DISSENT OF COMMISSIONER FRANK LANDIS:

I must respectfully dissent from the decision of the majority of my fellow commissioners. To begin with, the complainant's testimony received short shrift at the hands of the majority. His testimony was: He believes LT&T is providing poor quality of service in Seward, specifically, regarding his inability to transfer phone calls when he is on the phone or not in his office. His colleagues around the country utilize the sort of service he requests. The cost to LT&T of providing the service to him is minimal, \$3,800. Other people in Seward have requested the service. At one point, he was led to believe that LT&T would provide the service. In his business, a busy signal and no answer on the telephone are not acceptable. He does not get busy signals when he calls other businesses through the normal course of events. Low level telecommunication service affects everyone who considers locating in Nebraska. If he had it to do over again, before relocating in Nebraska, as he did last summer, he would have investigated the level of communication service more thoroughly than he did. LT&T has a monopoly. He has no other source of the service he requires. He requests that the calls to his number be diverted to his corporate voice mail in Dallas, Texas, when a calling party calls him when he is on the phone or out of the office. The diverted call would be a toll call at his expense. He thinks 10 or 15 other people in Seward would use this service. He would expect to pay approximately the same price for the feature that he paid when he was served by US West in Colorado. If he were to obtain the equipment to render the service that he wants, it would cost him approximately \$10,000. Call waiting would not be a solution to his service requirements. Additional lines would not solve the problem.

The testimony of the respondent was simply that adequate service is dial tone.

Pertinent statutes provide:

Neb. Rev. Stat. Section 75-109 (Reissue 1990) says:

Except as provided in sections 19-4603, 86-803, and 86-808, the commission shall have the power to regulate ... services of and to exercise a general control over all common carriers ... furnishing communications services for hire in Nebraska intrastate commerce. (Emphasis supplied.)

Neb. Rev. Stat. 86-803(6) (Reissue 1987) states:

The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may

by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-145 and may be appealed.

From these statutes it is clear that the Legislature has delegated to the Commission the authority to regulate the service provided by a telephone company. The authority of the Commission to set standards of telephone service was confirmed by the Supreme Court in Myers v. Blair Tel. Co., 194 Neb.55, 230 N.W.2d 190 at page 61 of the Nebraska Report the Court stated:

"A public utility is obligated to serve all its ratepayers fairly and without undue discrimination. In seeing that the utility meets this obligation, the commission is not directing how funds of the utility are to be used. Rather, it is requiring the utility to render the service for which the rate was set, or, as was done here, to refund a portion of the rate charged for the inferior service. As we said in Furstenberg v. Omaha & C.B. St. Ry. Co. (1937), 132 Neb. 562, 272 N.W. 756: 'The primary object of the regulation of public utilities by the railway commission is not to establish a monopoly or to guarantee the security of investment in public service corporations, but, first and at all times, to serve the interest of the public.'"

I cannot conceive that in this day and age of burgeoning telephonic technology a carrier's responsibility extends merely to providing dial tone. Respondent has already admitted that it provides the service requested by the complainant in at least four other cities in its territory. Given respondent's capitalization and profitability, I can see no reason why respondent should not make the nominal investment requested by complainant. Respondent has admitted that it has not made any serious effort to market the service requested by complainant in the Seward area. In pricing the service complainant requests, the respondent should take into consideration the additional toll charges that it stands to accrue from respondent's use of a Dallas terminus for the incoming calls that would be diverted if the service complainant requests were in place.

For complainant, the highly touted information/communication super highway turns out to be a gravel road in Seward County.

Furthermore, the action of the majority appears to violate Neb. Rev. Stat. Section 84-1411 (Reissue 1987), which provides in pertinent part:

APPLICATION NO. FC-1240

PAGE FIVE

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice, or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting ... The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting. ***

Further, Neb. Rev. Stat. Section 84-1412 (Reissue 1987) in pertinent part states:

(1) Subject to sections 79-327, 84-1408 to 84-1414, and 85-104, the public shall have the right to attend and the right to speak at meetings of public bodies ***

This matter has been on the agenda at least three times and was passed over before it was brought up as a non-agenda item June 7. It is noted that the Commissioner who represents the complainant's district was not at the meeting and could have had no notice that the majority planned to move on this matter that day. For these procedural reasons alone, the decision should be reconsidered.


Commissioner Frank Landis